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No. 09-252

Supreme Court, U.S.
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In The
Supreme Court of the United States

JOHN QUINN,

Petitioner,

v.

JOHN ROACH, individually and in his official capacity as Collin County District Attorney, et al.,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

BRIEF IN OPPOSITION

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November 16, 2009

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QUESTIONS PRESENTED

1. Whether Petitioner has presented compelling reasons to grant the Petition, where the Fifth Circuit's Opinion holding that the District Attorney Respondents were entitled to prosecutorial immunity for actions relating to their decision of whether and when to file criminal charges does not conflict with a decision of this Court or another circuit court of appeals.

2. Whether Petitioner has presented compelling reasons to grant the Petition, where the Fifth Circuit's Opinion holding that the District Attorney Respondents were entitled to prosecutorial immunity based upon claims that they violated a state procedural statute governing the time in which an indictment is presented to the grand jury does not conflict with a decision of this Court or another circuit court of appeals.

3. Whether Petitioner has presented compelling reasons to grant the Petition, where the Fifth Circuit's Opinion holding that the District Attorney Respondents were entitled to prosecutorial immunity from the Petitioner's claims against them in their individual capacities and Eleventh Amendment Immunity from the Petitioner's claims against them in their official capacities does not conflict with a decision of this Court or another circuit court of appeals.

4. Whether Petitioner has presented compelling reasons to grant the Petition, where the Fifth Circuit's Opinion holding that the Petitioner was not entitled to money damages under 42 U.S.C.

§ 1983 for a violation of his speedy trial rights under the Sixth Amendment does not conflict with a decision of this Court or another circuit court of appeals.

LIST OF PARTIES

Petitioner

JOHN QUINN

Respondents

JOHN ROACH, individually and in his official capacity as Collin County District Attorney; GAIL LEYKO, individually and in her official capacity as Collin County Assistant District Attorney; MANUEL GONZALES, individually and in his official capacity as Collin County Assistant District Attorney; CURTIS HOWARD, individually and in his official capacity as Collin County Assistant District Attorney, KRISTI TYLER, individually and in her official capacity as Collin County Assistant District Attorney, MICHELE VOIRIN, individually and in her official capacity as Collin County Assistant District Attorney; JOSE QUILES, individually and in his official capacity as McKnney Texas police officer; COLLIN COUNTY, TEXAS; and CITY OF McKINNEY

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The opinion of the Court of Appeals (Petitioner's App. 1-29) is unreported but available at 326 Fed. App'x 280. The Opinion of the District Court (Petitioner's App. 30-31) is unreported but available at 2007 WL 922233. The Report & Recommendation of the United States Magistrate Judge (Petitioner's App. 32-41) is unreported but available at 2007 WL 737523.

STATEMENT OF THE CASE

A. Introduction

Put simply, Petitioner has presented no "compelling reasons" for this Court to grant his Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit ("Petition"). *See* Sup. Ct. R. 10. Specifically, Petitioner has failed to demonstrate that the Fifth Circuit's May 4, 2009 Opinion ("Opinion") rendered in the case at bar is in conflict with a decision of this Court or another court of appeals, or that the Fifth Circuit has decided an important federal question that has not been settled by this Court. *See id.* As a result, the Petition should be denied.

Throughout his Petition, the Petitioner seeks to portray the underlying Opinion as setting the Fifth Circuit wholly apart from the jurisprudence propounded by its sister courts and this Court. For example, the Petitioner repeatedly characterizes the Opinion as "in direct conflict with nearly every other circuit," representing to this Court that a significant circuit conflict exists. Petition at 14. However, to the contrary, the Opinion is consistent with the long-standing protections provided by this Court and the

lower federal courts to prosecutors engaged in their performance of determining how, whether, when and against whom they should bring criminal charges. As a result, this Court's intervention – merely to reaffirm same – is unwarranted.

Ultimately, the Petitioner's argument is that the Fifth Circuit should have created an exception to the doctrine of prosecutorial immunity (and its attendant immunities as recognized by this Court) to provide the Plaintiff a cause of action under 42 U.S.C.A. § 1983 (West 2003) for money damages against the District Attorney of Collin County, Texas and several of his assistants. This exception the Petitioner seeks to create in the well-settled doctrine of prosecutorial immunity stems from his disagreement with certain prosecutorial decisions (i.e., when his case was to be presented to the grand jury) made by the District Attorney's Office, even though the charges against him were ultimately dismissed when Petitioner was "'no-billed[,]'" and he now seeks to impose financial penalty upon these prosecutors on the order of $28,490,000.00 in compensatory damages and $25,000,000.00 in punitive damages. Petition at 4; Respondents' App. at 42b-43b. But both the district court and the Fifth Circuit declined to break this Court's well-settled precedents and create a new claim for money damages against prosecutors for making these decisions.

Much of the purported conflict the Petitioner pleas exists comes from a blatant misreading of the Fifth Circuit's holdings in the underlying Opinion. As will be set forth in further detail, it is this repeated misreading of the Fifth Circuit's analysis which gives rise to many of the unnecessary questions that the Petitioner seeks to put before this Court. Because the

Petitioner is simply incorrect that any of the Fifth Circuit's analysis would render it an outlier among the federal circuits, this Court should certainly use its time more judiciously and deal with other actions where true disputes of federal questions are implicated.

Petitioner has failed to carry his burden to establish that there is any compelling reason for this Court to grant the Petition. Accordingly, the Petition should be denied.

B. Summary of the Underlying Facts and Proceedings.

As was noted by the Fifth Circuit, the claims originally asserted by the Petitioner can be divided into two groups: (1) those dealing with his initial arrest; and (2) those dealing with the subsequent fifteen-month delay in the presentation of his case to the grand jury. Petitioner's App. at 2. The Petitioner's claims against Collin County, the Collin County District Attorney, and the assistant district attorneys (collectively the "County Respondents")[1] relate only to the fifteen-month delay in the presentation of the case to the grand jury, and, as a result thereof, only issues relating to the County Respondents will be addressed in this Response. Petitioner's App. at 3. Petitioner brought suit against the County Respondents under, *inter alia*, 42 U.S.C. § 1983 seeking money damages

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[1] Herein, these Respondents may also use the term the "District Attorney Respondents" in reference to the Collin County District Attorney and the assistant district attorneys, without Collin County.

and injunctive relief against the County Respondents. Petitioner's App. at 3.

Petitioner was arrested on September 12, 2004 by the McKinney Police Department and charged with the felony criminal offense of aggravated sexual assault of a child, his own daughter. Petitioner's App. at 7. The County Respondents were not involved in any manner with the investigation of the Petitioner or his arrest, and there are no allegations of same. Petitioner's App. at 3; *see generally* Respondents' App. at 1b-54b. Petitioner was subsequently released on bail. Petitioner's App. at 7. Over one year having passed since his arrest, Petitioner filed a writ of habeas corpus in state court seeking release from bail because of delay, and on January 6, 2006 a state district judge granted the writ and issued an order of dismissal. *Id.* On January 10, 2006, the District Attorney Respondents presented the matter to the Collin County Grand Jury, which "no billed" the Petitioner. *Id.*

The Petitioner subsequently filed suit against the County Respondents, his Complaint averring both federal and state law claims. Concerning his relevant federal claims against the County Respondents, the Petitioner contended that they had purportedly violated his constitutional "right to a speedy trial as protected by the Sixth Amendment" and his "rights to substantive and procedural due process and equal protection of the laws protected by the Fifth and Fourteenth Amendments."[2] Then, solely against the

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[2] In his Petition, Petitioner appears to limit his claims for review by this Court to those associated with his Sixth Amendment

District Attorney Respondents, the Petitioner averred that they "violated clearly-established statutory law prohibiting delays in prosecution (Tex. Code Crim. Proc. § 32.01) and relating to their duties as prosecutors (Tex. Code Crim. Proc. § 2.01)." Respondents' App. at 42b. With respect to his federal claims against Collin County itself, the Petitioner alleged the county had either (1) improper customs, policies, and practices, (2) "no policies," or (3) "policies routinely ignored."[3] Respondents' App. at 31b-33b.

The County Respondents answered and asserted various defenses including, *inter alia*, Prosecutorial Immunity, Official Immunity, Qualified Immunity, Sovereign Immunity, and Eleventh Amendment Immunity. Collin County also denied that the Petitioner was deprived of a constitutionally protected right by any custom, policy or practice of the county. After answering, the County Respondents filed a Motion to Dismiss the Petitioner's claims, which was granted in full by the District Court, adopting the Report and Recommendations of the United States

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speedy trial right, and these Respondents specifically aver that Petitioner has so limited the scope of this Court's review to his claims arising under the Sixth Amendment. *See Albright v. Oliver*, 510 U.S. 266, 275 (1994) (plurality opinion) ("We express no view as to whether petitioner's claim would succeed under the Fourth Amendment, since he has not presented that question in his petition for certiorari.").

[3] Again, with regard to the specific claims against Collin County, the Petitioner does not appear to seek certiorari on any of the Fifth Circuit's holdings regarding these *Monell* claims against it, and these Respondents specifically aver that Petitioner has so limited the scope of this Court's review to include no such claims. *See generally* Petition. *See Albright*, 510 U.S. at 275.

Magistrate Judge.[4] Petitioner's App. at 32-41, 30-31. The District Court's holding was subsequently certified for appeal and Petitioner appealed same. The Fifth Circuit, on May 4, 2009, affirmed the District Court's dismissal of the County Respondents. Petitioner's App. at 1-29. Specifically, the District Attorney Respondents were dismissed on immunity grounds and Collin County on the grounds that the District Attorney Respondents, the only alleged actors constituting the foundation of the Petitioner's claims against the county, were state rather than county officials while engaged in their prosecutorial functions. Petitioner's App. at 21-29.

REASONS FOR DENYING THE PETITION

I.
No Divergence In The Application of Prosecutorial Immunity Exists In The Opinion

A. The Fifth Circuit's Opinion Is Consistent With This Court's Precedents and the Holdings of Its Sister Courts of Appeal With Regard to The Application of Prosecutorial Immunity

In his Petition, the Petitioner states that "if Quinn's case had been brought in any circuit court other than the Fifth, the outcome below would have been the opposite of what occurred." Petition at 22. The Petitioner is flatly incorrect, and the Fifth Circuit properly followed this Court's precedents, consistent

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[4] The District Court corrected a single word in the Report and Recommendation's dismissal of Collin County. *See* Petitioner's App. at 30-31.

with the well-settled law of its sister courts, in rendering the Opinion below.

As this Court has previously recognized, though absolute prosecutorial immunity reflects a "a balance" of "evils[,]" "it has been thought in the end better to leave unredressed the wrongs done by dishonest officers than to subject those who try to do their duty to the constant dread of retaliation." *Gregorie v. Biddle*, 177 F.2d 579, 581 (2nd Cir. 1949) (Hand, C.J.) (quoted in *Van de Kamp v. Goldstein*, 129 S.Ct. 855, 859 (2009)). In arguing that the Fifth Circuit's holding was inconsistent with this Court's precedents and the holdings of the other circuit courts, the Petitioner concedes, as he must, that prosecutors, such as the District Attorney Respondents, are entitled to absolute prosecutorial immunity with regard to their actions which are "intimately associated with the judicial phase of the criminal process." Petition at 22 (quoting *Imber v. Pachtman*, 424 U.S. 409, 430 (1976)). However, the Petitioner fails to recognize that the decision by the District Attorney Respondents of whether and when to dismiss charges or present a case to the grand jury falls specifically within the scope of the immunity provided by *Imbler*. Specifically, the Petitioner simply fails to acknowledge that in *Imbler* this Court held that

> [w]e recognize that the duties of the prosecutor in his role as advocate for the State involve actions preliminary to the initiation of a prosecution and actions *apart from the courtroom*. A prosecuting attorney is required constantly, in the course of his duty as such, to make decisions on a wide variety of sensitive issues. These include questions of *whether to*

> *present a case to a grand jury, whether to file an information, whether and when to prosecute, whether to dismiss an indictment against particular defendants,* which witnesses to call, and what other evidence to present.

Imbler, 424 U.S. at 430 n.33 (emphasis added). This Court further reasoned that without absolute immunity, the threat of Section 1983 liability would undermine the performance of a prosecutor's duty to "exercise his best judgment [] in deciding which suits to bring and in conducting them in court." *Id.* at 424-425. This Court's subsequent case law, as well as the well-settled law of the circuit courts, has consistently reaffirmed this principle.

In this regard, as recently as its last term this Court reaffirmed these principles first espoused in *Imbler*, as well as the subsequent distinctions espoused by this Court and the various circuit courts. *Van de Kamp v. Goldstein*, 129 S.Ct. 855, 861 (2009). As noted in *Goldstein*, absolute prosecutorial immunity may not apply when "a prosecutor is not acting as 'an officer of the court,' but is instead engaged in other tasks, say, investigative or administrative tasks." *Id.*; *see also* Petitioner's App. at 26-27. Further, it is well settled among the circuit courts of appeal that prosecutors are not entitled to absolute prosecutorial immunity when claims asserted against them relate to investigative functions or mere administrative actions. *See, e.g.*, *Brooks v. Rothe*, 577 F.3d 701, 712 (6th Cir. 2009) (quoting *Cooper v. Parish*, 203 F.3d 937, 946-47 (6th Cir. 2000)); *Cousins v. Lockyer*, 568 F.3d 1063, 1068 (9th Cir. 2009) (quoting *Van de Kamp*, 129 S.Ct. at 861); *Mangiafico v. Blumenthal*, 471 F.3d 391, 396 (2nd Cir. 2006). The Petitioner, however, fails to grasp

this distinction. Specifically, he argues the decisions of whether to present a case to a grand jury and whether to dismiss a criminal charge are decisions which fall outside a prosecutor's "advocatory" function and are, instead, ministerial or administrative acts for which absolute prosecutorial immunity does not apply. *See* Petition at pp. 23-24. This is, frankly, a clear misstatement of this Court's precedents and well-settled law.

In arguing this point, the Petitioner not only ignores the clear holdings of *Imbler* and *Goldstein* but wholly misconstrues the Fifth Circuit's citation of *Goldstein* in the Opinion below. In a footnote, the Petitioner asserts that the result of the Fifth Circuit's Opinion would be that "*all* actions taken by prosecutors, even those not involving advocacy functions, now qualify for absolute immunity." Petition at 23 n.14 (emphasis in original). However, the Fifth Circuit's Opinion objectively does not state this proposition. Specifically, the Fifth Circuit cited to *Goldstein* only once when discussing the nature of the Petitioner's claims:

> [i]n this case, Quinn is suing the District Attorney Defendants for waiting fifteen months after he was arrested to seek an indictment. The alleged wrongful act concerns the decision of when and whether to file criminal charges, which clearly falls within the scope of the District Attorney Defendants' prosecutorial duties. Quinn's contention that prosecutors are only entitled to prosecutorial immunity when they are engaged in advocacy *before a court* has been clearly rejected by the Supreme Court. *See Van de Kamp v. Goldstein*, --- U.S. ----, 129 S.Ct.

> 855, 861-65, 172 L.Ed.2d 706 (2009) (holding that prosecutorial immunity applied to acts related to establishment of office administrative procedures regarding how and when to make impeachment information available at a trial); *Imbler*, 424 U.S. at 431 n. 33, 96 S.Ct. 984 ("We recognize that the duties of the prosecutor in his role as advocate for the State involve actions preliminary to the initiation of a prosecution and actions apart from the courtroom.").

Petitioner's App. at 26-27 (emphasis added) (other internal citations omitted). It is clear from the Fifth Circuit's discussion that its holding only rejects the Petitioner's argument, made before the Fifth Circuit, that prosecutorial immunity extends only to actual courtroom advocacy, not that "*all* actions taken by prosecutors . . . now qualify for absolute immunity." Petition at 23 n.14. In fact, in *Goldstein* this Court did extend absolute prosecutorial immunity to "a prosecutor engaged [] in certain administrative activities" which are "directly connected with the conduct of a trial."[5] *Goldstein*, 129 S.Ct. at 861-62. This comports exactly with the "functional" approach to prosecutorial immunity approved by this Court, used

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[5] As this Court recognized, such administrative procedures (specifically, the training of assistant district attorneys and supervision of the district attorney's office's information system) are distinct from other administrative duties unrelated to the prosecutorial function, such as "workplace hiring, payroll administration, the maintenance of physical facilities, and the like." *Goldstein*, 129 S.Ct. at 862.

by the circuit courts,[6] and, surprisingly, urged by the Petitioner.[7] Petition at 23; *Goldstein*, 129 S.Ct. at 861 (citing *Burns v. Reed*, 500 U.S. 478, 486 (1991); *Kalina v. Fletcher*, 522 U.S. 118, 127, 130 (1997)).[8] As a result,

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[6] In this regard, the Petitioner cites to *Atherton v. District of Columbia Office of Mayor*, 567 F.3d 672 (D.C. Cir. 2009) as an example of a case where *Goldstein* was properly interpreted. Petition at 23. However, *Atherton* is a wholly different scenario and was rightly distinguished from *Goldstein* by the D.C. Circuit. Specifically, it is undisputed that in this case, the Petitioner asserts claims based upon his allegations that the District Attorney Respondents took improper action relating to criminal charges pending against him. *See* Respondents' App. at 26b-35b. *Atherton*, on the other hand, dealt with an Assistant United States Attorney who unilaterally removed a grand juror when he was *not* involved whatsoever in presenting a case to the grand jury, and the D.C. Circuit recognized this express distinction. *Atherton*, 567 F.3d at 687 ("In this case, however, Zachem was not the AUSA who was presenting evidence to the grand jury. . . . Zachem's alleged activities–improperly removing a grand juror on the basis of his ethnicity and/or for the content and quality of his deliberations–had nothing to do with a prosecutor's preparation for or participation in a criminal trial."). Here, the Petitioner's claims relate only to the disposition of *charges* against him. *See Imbler*, 424 U.S. at 430 n.33.

[7] As this Court went on to note, "in terms of *Imbler*'s functional concerns, a suit charging that a supervisor made a mistake directly related to a particular trial, on the one hand, and a suit charging that a supervisor trained and supervised inadequately, on the other, would seem very much alike." *Goldstein*, 129 S.Ct. at 863.

[8] As noted in *Buckley*, in determining whether particular actions of government officials fit within a common-law tradition of absolute immunity, or only the more general standard of qualified immunity, this Court applies a "functional approach" which looks to the nature of the function performed, not the identity of the

consistent with this Court's precedents stemming from *Imbler*, *Goldstein* reaffirmed that prosecutors engaged in their prosecutorial duties are entitled to absolute prosecutorial immunity from a plaintiff's claims brought under 42 U.S.C. § 1983, and because the Petitioner's claims merely mirror those claims addressed in *Imbler*, i.e., whether to present a case to the grand jury and whether to dismiss a criminal charge, the Fifth Circuit's underlying Opinion was completely consistent with this Court's precedents and the holdings of its sister courts. In fact, this Court addressed the Petitioner's precise arguments sixteen years ago in *Buckley v. Fitzsimmons*, noting that

> [p]etitioner argues that *Imbler*'s protection for a prosecutor's conduct "in initiating a prosecution and in presenting the State's case[]" extends only to the act of initiation itself and to conduct occurring in the courtroom. This extreme position is plainly foreclosed by our opinion in *Imbler* itself. We expressly stated that "the duties of the prosecutor in his role as advocate for the State involve actions preliminary to the initiation of a prosecution and actions apart from the courtroom," and are nonetheless entitled to absolute immunity.

509 U.S. 259, 272 (1993) (Stevens, J.) (internal citations omitted). As a result, the Petitioner has demonstrated no compelling reason for this Court to grant his Petition. *See* Sup. Ct. R. 10.

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actor who performed it. *Buckley v. Fitzsimmons*, 509 U.S. 259, 269 (1993).

B. The Petitioner Refuses to Recognize the Well-Established Precedents Supporting the District Attorney Respondents' Entitlement to Absolute Prosecutorial Immunity

Petitioner argues that prosecutorial immunity should not be recognized in this instance due to the fact that the District Attorney Respondents did not, *inter alia*, show "that the type of conduct or function at issue was immune from liability in 1871" when the Civil Rights Act was passed.[9] *See* Petition at pp. 24-25. This argument, however, misses the point of the present analysis. *See* Sup. Ct. R. 10. Even assuming, *arguendo*, that the Petitioner sets out a proper test for the determination of whether immunity is appropriate in a new or unique area of law, the issues raised by *this* Petitioner are well settled by this Court's prior precedents and uniformly applied across the various circuit courts. As a result, no "compelling reason" exists for the granting of the Petition. *See id.*

The well-settled nature of the existence of prosecutorial immunity for claims like those asserted by the Petitioner distinguishes this case from, for example, the case in *Buckley v. Fitzsimmons*, where the Court addressed a new question before it regarding a prosecutor's immunity for statements made to the press, and finding that a prosecutor was entitled only

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[9] This Court recognized in *Imbler* that the first American case to address the question of a prosecutor's amenability to a common-law tort action was not until 1896. *Imbler*, 424 U.S. at 420 (citing *Griffith v. Slinkard*, 146 Ind. 117, 44 N.E. 1001 (1896)).

to qualified immunity with regard to such claims.[10] 509 U.S. 259 (1993). On the other hand, specific to this case, the Plaintiff asserts that the County Respondents should be held liable under 42 U.S.C. § 1983 for failing to dismiss pending charges in accordance with a procedural statute governing the presentment of an indictment to the grand jury. *See* Petition at 27. However, it has long been well established that prosecutors are absolutely immune from damages based upon allegations relating to their decisions about *when* to dismiss charges. *Jerrytone v. Musto*, 167 Fed. App'x 295, 300 (3rd Cir. 2006) (unpublished opinion); *Sheehan v. Colangelo*, 53 Fed. App'x 584, 585 (2nd Cir. 2002) (unpublished opinion); *Joseph v. Yocum*, 53 Fed. App'x 1, 2 (10th Cir. 2002) (unpublished opinion) (quoting *Imbler*); *Goss v. Oregon*, 36 Fed. App'x 595, 595 (9th Cir. 2002) (unpublished opinion) (citing *Imbler*); *Walker v. Gasparini*, No. 99-3379, 2000 WL 133837, *1 (7th Cir. Feb. 2, 2000) (unpublished opinion); *Morley v. Walker*, 175 F.3d 756, 760 (9th Cir. 1999); *Brodnicki v. City of Omaha*, 75 F.3d 1261, 1267-68 (8th Cir. 1996); *Guzman-Rivera v. Rivera-Cruz*, 55 F.3d 26, 31 (1st Cir. 1995); *Fisher v. United States*, No. 91-1439, 1992 WL 63516, *1 (1st Cir. April 1, 1992) (unpublished opinion). While the Petitioner argues that the dismissal of the charges against him was a "ministerial action" which could have been performed

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[10] *Buckley* also addressed the immunity afforded to prosecutors when involved in investigative acts rather than functioning as "advocates." *Buckley*, 509 U.S. at 274-76. The *Buckley* court determined that this issue was foreclosed by the holding in *Burns v. Reed*, 500 U.S. 478, 495 (1991), which held that prosecutors were entitled only to qualified immunity for advice given to police officers during the course of an investigation.

by anyone, he cites no authority supporting this claim that his dismissal "could have been performed by anyone in the prosecutor's office, such as a clerk[,]" and the aforementioned cases make clear that decisions on *when* to dismiss charges are decisions within a prosecutor's discretion and are therefore entitled to the protection of absolute prosecutorial immunity. *Compare id.*, *with* Petition at 24. As a result, the Fifth Circuit's opinion is in line with the decisions of this Court, as well as its sister circuits, and no compelling reason for granting the Petition exists. Sup. Ct. R. 10.

II.
Courts Uniformly Hold That Prosecutors Retain Their Absolute Immunity For Violations of A State Procedural Statute or Rule

A. Prosecutors Are Absolutely Immune From 42 U.S.C. § 1983 Claims Based Upon Violations of State Procedural Rules or Statutes

In his third issue presented to this Court, the Petitioner suggests that certiorari should be granted so that this Court may determine whether prosecutors retain absolute immunity for a failure to comply with a state procedural statute or rule. *See* Petition at 27-28. However, the circuit courts have uniformly held that prosecutors retain their absolute immunity from such claims which are, in any event, insufficient to establish a violation of the United States Constitution for which recovery under 42 U.S.C. § 1983 is available.

It is well-established law that 42 U.S.C. § 1983 provides a cause of action only for the violation of

federal constitutional or statutory rights and not rights imputed to citizens under state law. *Collins v. City of Harker Heights*, 503 U.S. 115, 119 (1992) ("Although [§ 1983] provides the citizen with an effective remedy against those abuses of state power that violate federal law, it does not provide a remedy for abuses that do not violate federal law."); *Flagg Bros., Inc. v. Brooks*, 436 U.S. 149, 155 (1978) (quoting 42 U.S.C. § 1983); *Pierce v. Gilchrist*, 359 F.3d 1279, 1289 (10th Cir. 2004) (explaining § 1983 provides a cause of action for the deprivation of federal constitutional rights, it "does not provide a federal cause of action for every violation of state common law"); *Neinast v. Bd. of Trs. of Columbus Metro. Liab.*, 346 F.3d 585, 595 (6th Cir. 2003). This, however, is exactly the type of liability this Petitioner seeks to impose upon the County Respondents. Specifically, the Petitioner seeks to have this Court review whether prosecutors "may [] ignore [state] statutory law that expressly governs their conduct[.]" Petition at 27. However, the circuit courts have uniformly held that the violation of state procedural statutes do not constitute a violation of a *federal* right for which § 1983 liability may be imposed.

The State of Texas has no Speedy Trial Act.[11] *See Meshell v. State*, 739 S.W.2d 246 (Tex. Crim. App. 1987) (holding Texas Speedy Trial Act violated Texas Constitution); *cf.* Petition at 23-24 ("dismissal of the charges against Quinn in compliance with the Texas speedy-trial statute..."). However, its Code of Criminal

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[11] Many other states do have valid Speedy Trail Acts or rules governing same. *See, e.g.*, Ohio Rev. Code § 2945.71; Fla. R. Crim. P. 3.191.

Procedure does contain a statute governing the filing of an indictment against an arrested person. Tex. Code Crim. Proc. § 32.01 (Vernon 2006); *but see Ex parte Young*, 213 S.W.3d 327 (Tex. Crim. App. 2006) (Tex. Code Crim. Proc. § 28.061 (Vernon 2006), the sister statute to Tex. Code Crim. Proc. § 32.01 requiring that the dismissal of any indictment or complaint pursuant to § 32.01 be a dismissal *with prejudice*, violates the Texas Constitution). In his Petition, the Petitioner has–erroneously–stated that "[t]here are no cases directly on point for the assertion that prosecutors must obey on point, controlling statutes . . . in order to be entitled to immunity[.]" Petition at 27. However, the various circuit courts have routinely held that a violation of a state procedural rule or statute (often a state Speedy Trial Act) does not itself constitute a viable federal claim brought under 42 U.S.C. § 1983.[12] *See Allen v. Dept. of Corr. State of Florida*, 288 Fed. App'x 643, 645, 645 n.1 (11th Cir. 2008) (unpublished opinion) (finding "meritless" the argument that a violation of Florida's speedy trial rule was a federal constitutional claim merely because "that [state] rule is based on the United States Constitution"); *United States v. Ross*, Nos. 93-3772, 93-3880, 93-3901, 93-3915, 93-3916, 93-4040, 93-4198, 1995 WL 253183, *4 n.6 (6th Cir. April 27, 1995) (unpublished opinion) (rejecting argument that violation of state speedy trial statute was an indication of a constitutional violation because "state statutes may set a stricter deadline

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[12] In many instances, a violation of a state Speedy Trial Act results in the pending criminal charges being dismissed with prejudice to the refiling of same. *See, e.g.*, Ohio Rev. Code § 2945.73; Fla. R. Crim. P. 3.191(n); *cf. Ex Parte Young*, 213 S.W.3d 327 (requirement of dismissal with prejudice unconstitutional in Texas).

than the Constitution requires"), *vacated on other grounds* 516 U.S. 1024 (1995) (mem.); *Stewart v. Nix*, 972 F.2d 967, 970 (8th Cir. 1992) ("A *state* statute, however, has no bearing on whether the State violated Stewart's *federal* right to a speedy trial as protected by the Sixth Amendment.") (emphasis in original); *Wells v. Petsock*, 941 F.2d 253, 256 (3rd Cir. 1991) ("Pennsylvania's 180-day rule does not define the contours of the federal constitutional right to a speedy trial."); *Cotten v. Marshall*, No. 85-3925, 1986 WL 16893, *2 (6th Cir. April 17, 1986) (unpublished opinion) (contention that state speedy trial statute was violated "merely raises an issue under state law"); *United States ex rel. Little v. Twomey*, 477 F.2d 767, 770 (7th Cir. 1973). Neither, then, is a violation of a Texas procedural statute which is *not* a Speedy Trial Act and which requires only a dismissal *without* prejudice a cognizable violation of federal law for which recovery under § 1983 is viable, as the violation of this state statute has no bearing on whether the Petitioner's federal rights were violated. *Id.*

Additionally, when the circuit courts have addressed the issue of whether a prosecutor retains his immunity from speedy trial claims, they have uniformly ruled that such claims fall within the prosecutor's official prosecutorial functions. *See Shmueli v. City of New York*, 424 F.3d 231, 236-39 (2nd Cir. 2005) (in case never tried and ultimately dismissed pursuant to speedy trial statute, prosecutor was absolutely immune from post-arraignment allegations that the prosecutors "'maliciously prosecuted [Shmueli] for various crimes, all of which they knew she was innocent of committing' and 'intentionally ... delayed the criminal proceedings with

the intent of harassing' her"); *Logan v. Late[illegible]*, 24 Fed. App'x 579, 581 (7th Cir. 2001) (unpublished opinion) (prosecutors would be absolutely immune from allegation they delayed defendant's trial); *Miller v. Jones*, No. 96-6077, 1996 WL 421933, *1 (10th Cir. July 29, 1996) (unpublished opinion) (prosecutors are absolutely immune from, *inter alia*, claim for speedy trial violation); *Geter v. State of Arizona*, No. 90-16059, 1990 WL 212618, *1 (9th Cir. Dec. 20, 1990) (unpublished opinion) (prosecutor absolutely immune from claims of, *inter alia*, denial of right to speedy trial); *Ledwith v. Douglas*, 568 F.2d 117, 119 (8th Cir. 1978) ("Appellants's 1983 claim for damages for libel and denial of a speedy trial are barred by the doctrine of prosecutorial immunity enunciated in *Imbler* []"). As a result, even if the Petitioner had enunciated a viable claim for a violation of his *federal* speedy trial right, the County Respondents would be entitled to absolute prosecutorial immunity from those claims. *Imbler*, 424 U.S. at 431 n.33; *id.*; *see also supra* at Part I.

B. The Petitioner Has Failed to Allege Facts Establishing A Violation of His Sixth Amendment Right to Receive a Speedy Trial

Furthermore, the Petitioner also makes the fundamental error of asserting throughout his Petition that his right to a speedy trial under the Sixth Amendment has been violated. *See, e.g.*, Petition at 32. Contrary to Petitioner's claim, this Court's precedents make clear that the Petitioner suffered no harm under the Sixth Amendment which would be compensable under 42 U.S.C. § 1983. In this regard, while the Petitioner attempts to force his claims within the confines of the test espoused by this Court in *Barker v. Wingo*, 407 U.S. 512 (1972), the fundamental error

from which the Petitioner's analysis cannot recover is a failure to recognize that the Petitioner was never indicted, much less forced to suffer a *trial* for the criminal charges upon which he was arrested. *See* Petition at 4; Petitioner's App. at 7. In this regard, the "speedy trial" violation of which the Petitioner complains is the allegedly unconstitutional length between his arrest and the presentation of his case to the grand jury. Petition at 27; Petitioner's App. at 22. However, this Court has made absolutely clear that in order "to trigger a [Sixth Amendment] speedy trial analysis," a plaintiff must make allegations relating to "the interval between accusation and *trial*[.]" *Doggett v. United States*, 505 U.S. 647, 651 (1992) (emphasis added). The *Doggett* court went on to note that the "Sixth Amendment right of the accused to a speedy trial has no application beyond the confines of a formal criminal prosecution[.]" *Id.* at 654. While it is undisputed that this right *attaches* at the earlier of a defendant's arrest or indictment, for purposes of determining whether there has been a Sixth Amendment violation, only the time between triggering incident, i.e., the indictment or arrest, and the *trial* is considered. *United States v. Hatcher*, 300 Fed. App'x 659, 662 (11th Cir. 2008) (unpublished opinion) ("for Sixth Amendment speedy trial purposes, only the time between indictment or arrest and trial is considered") (citing *United States v. Marion*, 404 U.S. 307, 320 (1971)).[13] Once charges are dismissed, the

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[13] As this Court noted in *Dillingham v. United States*, it is "either a formal indictment or information or else the actual restraints imposed by arrest and holding to answer a criminal charge that engage the particular protections of the speedy trial provision of the Sixth Amendment." 423 U.S. 64, 65 (1975). However, while the *Dillingham* court went on to note that "[i]nvocation of the

speedy trial guarantee is no longer applicable. *United States v. McDonald*, 456 U.S. 1, 8 (1982). Put simply, because there was no trial in the case at bar–nor even the genuine threat of the Petitioner being put to trial by the County Respondents due to the fact that the County Respondents never returned an indictment against him–the Petitioner's Sixth Amendment right, while it attached, was never fully implicated, and, as a result, the Petitioner cannot establish a compensable Sixth Amendment violation. *Doggett*, 505 U.S. at 651; *id.* Therefore, because the Petitioner has not even demonstrated the existence of a viable Sixth Amendment claim, upon which he bases his Petition for this Court's review, no compelling reason for a grant of certiorari exists. *See* Sup. Ct. R. 10.

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speedy trial provision thus need not await indictment, information, or other formal charge[,]" this Court was addressing an instance where a criminal defendant, whose Sixth Amendment right had attached, still faced a future criminal trial on the charges pending against him. *Id.* In this instance, it is clear from the undisputed facts that no such trial ever occurred. Further, the state trial court properly released the Petitioner from his bond under the procedural statute which forms the basis of his claims. Petitioner's App. at 7. As a result, while *Dillingham* certainly supports the proposition that a criminal defendant–in fear of a future trial–need not wait to assert his Sixth Amendment speedy trial right until after he is put to trial in violation thereof, it does not stand for the proposition that, where no trial ever occurred, a violation of the individual's Sixth Amendment rights occurred.

III.
The Fifth Circuit's Holding That the District Attorney Respondents Were Entitled To Eleventh Amendment Immunity In Their Official Capacities Was Consistent With Its Sister Circuits

A. Texas Law Dictates That The District Attorney Respondents In Their Official Capacities Were State Actors

In his fourth point, the Petitioner presents to this Court the question of whether the District Attorney Respondents, and county employees generally, are entitled to Eleventh Amendment immunity when sued in their individual capacities. Petition at 28. But the Petitioner plainly misreads the Fifth Circuit's Opinion on this point because the Fifth Circuit objectively did not hold that Eleventh Amendment immunity was applicable to these officials in their individual capacities. Petitioner's App. at 27. To the contrary, the Fifth Circuit only addressed Petitioner's argument on appeal that "the district court erred by finding that the county prosecutors were protected by Eleventh Amendment immunity from being sued in their *official capacities*[.]" *Id.* (emphasis added). The Fifth Circuit then held that the District Attorney Respondents were entitled to Eleventh Amendment immunity from the Petitioner's claims asserted against them in their official capacities due to the fact that, because they were engaged in the course of their capacities as prosecutors, they acted as state rather than county employees for the acts alleged by the Petitioner. *Id.* at 27-28; *see supra* at Part I. The Fifth Circuit, separately, determined that the District Attorney Respondents were entitled to prosecutorial immunity

in their individual capacities from the Petitioner's claims. Petitioner's App. at 24-27. As the County Respondents have demonstrated, *supra*, the Fifth Circuit's holding with regard to the prosecutorial immunity of the District Attorney Respondents in their individual capacities is consistent with the jurisprudence of this Court and the Fifth Circuit's sister courts. *See supra* at Part I(A); *Nivens v. Gilchrist*, 444 F.3d 237, 249-50 (4th Cir. 2006) (while Eleventh Amendment immunity does not bar individual capacity claim against prosecutor, absolute prosecutorial immunity does); *Willhauck v. Halpin*, 953 F.2d 689, 711 n.22 (1st Cir. 1991) ("a § 1983 action brought after the fact for damages against prosecutors in their individual capacity would, as the district court correctly observed, be barred by the doctrine of prosecutorial immunity.").

Furthermore, the Fifth Circuit's determination that the District Attorney Respondents were entitled to Eleventh Amendment immunity for the official capacity claims asserted against them is wholly consistent with the analysis used throughout the circuit courts to make similar determinations. In this regard, the circuit courts, including the Fifth Circuit, look to state law to determine whether a particular official in his official capacity is the legal equivalent of the State. *See, e.g.*, *Garcia v. City of Chicago*, 24 F.3d 966, 969 (7th Cir. 1994); *Esteves v. Brock*, 106 F.3d 674, 678 (5th Cir. 1997) ("Texas law makes clear, however, that when acting in the prosecutorial capacity to enforce state penal law, a district attorney is an agent of the state"); *Coleman v. Kaye*, 87 F.3d 1491, 1500-05 (3d Cir. 1996) (explaining that county prosecutors in New Jersey act as county officials when performing administrative functions, but they act as state officers

when they engage in classic law enforcement and investigative functions); *Owens v. Fulton County*, 877 F.2d 947, 952 (11th Cir. 1989) (differentiating Georgia district attorneys' state and county functions). The Fifth Circuit, which has federal appellate jurisdiction over the State of Texas, has analyzed Texas law and determined that when acting in a prosecutorial capacity, a district attorney is an agent of the State, not an agent of the county in which the criminal case happens to be prosecuted, and is thus protected by Eleventh Amendment immunity from claims asserted against him in his official capacity. 28 U.S.C.A. § 41 (West 2006); *Esteves*, 106 F.3d at 678; *see also Spikes v. Phelps*, 131 Fed. App'x 47, 49 n.1 (5th Cir. 2005) (unpublished opinion) ("Texas district attorneys are shielded by Eleventh Amendment immunity for acts performed as state officers in the scope of criminal prosecution, but they are not so shielded when they act with respect to local policies."). This analysis conducted by the Fifth Circuit has been unique to Texas, and the Fifth Circuit has held that the state laws governing district attorneys in each of the three states encompassed by its jurisdiction are each affected differently by Eleventh Amendment immunity. *See Hudson v. City of New Orleans*, 174 F.3d 677, 691 (5th Cir. 1999) (holding that a Louisiana parish district attorney's office is not entitled to Eleventh Amendment immunity); *Chrissy F. by Medley v. Mississippi Dept. of Public Welfare*, 925 F.2d 844, 849 (5th Cir. 1991) (Mississippi district attorneys' offices are wholly state agencies). Further, this conclusion regarding Texas District Attorneys is not unique and creates no conflict amongst the circuits, as many circuit courts have held that under the laws of the particular states at issue, district attorneys engaged in their prosecutorial functions are agents of

the state and are therefore entitled to Eleventh Amendment immunity from claims asserted against them in their official capacities. *See Del Campo v. Kennedy*, 517 F.3d 1070, 1073 (9th Cir. 2008) (California district attorneys entitled to Eleventh Amendment immunity when acting within their prosecutorial capacity); *Gradle v. Oklahoma*, 203 Fed. App'x 179, 183 (10th Cir. 2006) (unpublished opinion) (dismissing official capacity claims against Oklahoma district attorney on Eleventh Amendment grounds); *Nivens*, 444 F.3d at 249 (official capacity claims against North Carolina district attorneys dismissed due to Eleventh Amendment immunity); *Rodriguez v. Weprin*, 116 F.3d 62, 66 (2nd Cir. 1997) (New York district attorneys entitled to Eleventh Amendment immunity from official capacity claims). As a result, because the Fifth Circuit's interpretation of Texas law is entirely consistent with the similar determinations many other circuit courts have made with regard to the protection of state district attorneys from official capacity claims via the Eleventh Amendment – depending on the law of the state at issue – there exists no compelling reason for this Court to grant the Petition. Sup. Ct. R. 10.

B. Even If Absolute Prosecutorial Immunity Is Inapplicable Herein, The Fifth Circuit Determined the District Attorney Respondents Were Entitled to Qualified Immunity In Their Individual Capacities

Furthermore, the Fifth Circuit agreed with the District Court's determination that, even were the District Attorney Respondents not entitled to absolute prosecutorial immunity, they were entitled to qualified immunity due to the fact that the Petitioner had failed

to allege facts establishing a constitutional violation. Petitioner's App. at 25. It is well settled that where prosecutorial immunity is inapplicable, prosecutors are still entitled to qualified immunity from a plaintiff's claims. *Burns v. Reed*, 500 U.S. 478 (1991) (prosecutors entitled to qualified immunity when not entitled to absolute immunity); *al-Kidd v. Ashcroft*, 580 F.3d 949, 958 (9th Cir. 2009) (prosecutors entitled to qualified immunity when not entitled to absolute immunity); *Kulwicki v. Dawson*, 969 F.2d 1454, 1463 (3rd Cir. 1992). Further, as the Fifth Circuit held, it is well settled that in order to defeat a governmental agent's claim of qualified immunity, a plaintiff must plead a violation of a federally secured right. *Pearson v. Callahan*, 129 S.Ct. 808, 818 (2009). The District Court in the case at bar determined that the Petitioner had failed to state a viable claim, either for a violation of his Due Process or Sixth Amendment speedy trial rights, and the Fifth Circuit agreed. Petitioner's App. at 25 & 38. However, the Petitioner does not address this portion of the underlying Opinion. Instead, he only alleges that he has stated a viable claim under the Sixth Amendment because this Court should hold that money damages are available for a violation thereof. Petition at 37. But the Petitioner's Sixth Amendment claim fails not (only) because money damages are an unavailable remedy thereunder, but because his Sixth Amendment rights were never fully implicated, an issue not addressed in the Petition. *See supra* at Part II(B); *infra* at Part IV(A); *Albright*, 510 U.S. at 275 ("We express no view as to whether petitioner's claim would succeed under the Fourth Amendment, since he has not presented that question in his petition for certiorari."). Because, as discussed *supra*, the Fifth Circuit's Opinion on these issues was directly in accordance with this Court's precedents, is

consistent with the decisions of its sister courts, and, because in any event the District Attorney Respondents would be entitled to qualified immunity from the Petitioner's claims, there exists no compelling reason for this Court to grant the Petition. Sup. Ct. R. 10.

IV.
This Petitioner Is Not Entitled To Money Damages For An Alleged Sixth Amendment Violation

A. The Fifth Circuit's Holding Did Not Preclude the Recovery of Money Damages For a Sixth Amendment Violation–It Merely Held That No Speedy Trial Violation Had Occurred

While the Petitioner reads the Fifth Circuit's comment that "[t]he only remedy for a violation of the Sixth Amendment right to a speedy trial is dismissal of any criminal charges" to establish that the Fifth Circuit has taken the position that money damages are never recoverable under 42 U.S.C. § 1983 for a violation of a plaintiff's Sixth Amendment right to a Speedy Trial, the Petitioner, again, misreads the substance of the Fifth Circuit's comment. Petitioner's App. at 23. Contrary to the Petitioner's reading, the Fifth Circuit's comment merely establishes that in the case at bar no Sixth Amendment violation could have occurred for which the Petitioner could conceivably seek such damages under § 1983 herein. *Id.* In this regard, "this Court has held dismissal of the indictment to be the proper remedy when the Sixth Amendment right to a speedy trial has been violated." *United States v. MacDonald*, 435 U.S. 850, 861 n.7 (1978). But in the case at bar, it is undisputed that the

Petitioner was never indicted, and no charges were ever brought against him by the County Respondents. *See* Petition at 7. As a result, because no recourse provided by the Sixth Amendment could have been granted in the underlying case (i.e., no indictment against the Petitioner levied by the County Respondents could have been dismissed based upon a violation of the Petitioner's speedy trial right because such an indictment never existed), no Sixth Amendment violation compensable under 42 U.S.C. § 1983 could possibly have occurred. *Id.*

The Petitioner protests this finding by the Fifth Circuit by asserting, correctly, that the Sixth Amendment right to receive a speedy trial attaches at the time of arrest or indictment, whichever occurs first. Petition at 34-35. However, the time of the right's attachment has no effect on whether there was, ultimately, a constitutional violation.[14] In fact, the Fifth Circuit expressly recognized this as the proper law governing the right's attachment in its Opinion. Petitioner's App. at 22. However, as demonstrated *supra*, while the right attaches at the earlier of arrest or indictment–starting the clock on the criminal defendant's behalf–the right itself protects a defendant's right to receive a speedy *trial*. *See supra* at Part II(B); U.S. CONST. amend. VI; *Doggett*, 505 U.S. at 651. Because no indictment was ever returned against

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[14] For example, a citizen's Fourth Amendment right to be free from illegal search and seizure could be said to always been attached, because a citizen is always entitled to the Fourth Amendment's protection, but a cognizable violation of the Fourth Amendment must occur in order for same to be compensable under 42 U.S.C. § 1983. *See Tennessee v. Garner*, 471 U.S. 1 (1985) (affirming § 1983 liability based on Fourth Amendment violation).

the Petitioner by the County Respondents, there was never a genuine threat of his being tried, and the remedy available to the courts to cure such a Sixth Amendment violation (i.e., dismissal of the criminal indictment) was at all times unavailable to the state trial court as there existed no indictment to dismiss.[15] *MacDonald*, 435 U.S. at 861 n.7. As a result, because there was no violation of the Petitioner's Sixth Amendment rights, the Fifth Circuit correctly held that he lacked standing to bring a claim for an award of money damages based upon this alleged violation. Petitioner's App. at 23-24 ("plaintiff must show a 'substantial likelihood that the requested relief will remedy the alleged injury in fact'") (quoting *Vermont Agency of Natural Res. v. United States ex rel. Stevens*, 529 U.S. 765, 771 (2000)).

This holding that Petitioner lacked standing to assert a claim under the Sixth Amendment was also directly in line with this Court's precedents on the issue of standing. In this regard, this Court has held that "[t]he question of standing . . . concerns . . . the question [of] whether the interest sought to be protected by the complainant is arguably within the zone of interests to be protected or regulated by the statute or constitutional guarantee in question." *Assoc. of Data Processing Serv. Orgs., Inc. v. Camp*, 397 U.S. 150, 153 (1970).[16] The circuit courts and lower courts

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[15] Again, it is important to note that the pending charges against the Petitioner *were* dismissed pursuant to Tex. Code Crim. Proc. § 32.01. Petitioner's App. at 7.

[16] Notably, the "zone of interests" test is an element of prudential standing, not Article III standing, as this Court has repeatedly noted. *See, e.g., Bennett v. Spear*, 520 U.S. 154, 162 (1997)

have interpreted this doctrine to bar suits when a plaintiff seeks recovery under a particular provision of the Constitution and the Constitutional provision cited does not protect the interest sought to be redressed by the plaintiff. *See Cntr. for Reproductive Rights v. Bush*, 304 F.3d 183, 186 (2nd Cir. 2002) (Sotomayor, J.) ("We dismiss the due process claim under the doctrine of prudential standing, as plaintiffs' alleged harm does not fall within the zone of interests protected by the Due Process Clause."); *Calvin v. Conlisk*, 534 F.2d 1251, 1253 (7th Cir. 1976) (plaintiff lacked standing when asserted Fourteenth Amendment claims fell outside of Fourteenth Amendment's zone of interests); *see also Lightfoot v. Maine Dept. of Health & Human Servs.*, Civil No. 06-53-B-W, 2006 WL 2925243, *5 (D. Me. Oct. 11, 2006) (finding no standing where Magistrate Judge found plaintiff's "allegations of rights violations simply do not fall within the zone of interests protected by the First, Fifth, and Fourteenth Amendments."). Because no issue relating to whether an otherwise compensable violation of the Petitioner's Sixth Amendment rights occurred has been presented to this Court, the Petitioner has given no compelling reason to grant the Petition and address the Petitioner's issue of "first impression" on the availability of money damages for a Sixth Amendment speedy trial violation. Sup. Ct. R. 10; *Albright*, 510 U.S. at 275.

("Numbered among these prudential requirements is the doctrine of particular concern in this case: that a plaintiff's grievance must arguably fall within the zone of interests protected or regulated by the statutory provision or constitutional guarantee invoked in the suit.").

B. This Court Has Held That Dismissal of A Criminal Indictment Is the Sole Remedy For A Violation of A Defendant's Sixth Amendment Right to Receive a Speedy Trial

Finally, even while the Petitioner presents what he styles as an issue of "first impression" before this Court: whether a plaintiff may recover money damages under 42 U.S.C. § 1983 for a violation of his Sixth Amendment right to a speedy trial, no compelling reason exists for this Court to grant certiorari on this ground in this case. Petition at 32; Sup. Ct. R. 10. First and foremost, as demonstrated, *supra*, the Petitioner has failed to demonstrate the existence of a cognizable Sixth Amendment violation by the County Respondents because they never returned a criminal indictment against him, and, as a result, his right to a speedy trial, as protected by the Sixth Amendment, could not have been violated. *See supra* at II(B), IV(A). Secondly, however, as has been recognized by other courts, this Court has spoken with regard to the specific remedies available to a party whose right to receive a speedy trial is infringed. Specifically, "this Court has held dismissal of the indictment to be the proper remedy when the Sixth Amendment right to a speedy trial has been violated.[.]" *MacDonald*, 435 U.S. at 861 n.7; *see also Midland Asphalt Corp. v. United States*, 489 U.S. 794, 801 (1989); *Barker*, 407 U.S. at 522 (dismissal of indictment is the "only possible remedy" for violation of Sixth Amendment right to speedy trial). The lower courts have also recognized that money damages are not available for such a violation. *Cayton v. United States*, No. 97-5023, 1998 WL 563848, *2 (Fed. Cir. Sep. 4, 1998) (unpublished opinion) (money damages not available for violation of Sixth Amendment right to speedy trial under § 1983);

Bauman v. Hidalgo County, Texas, No. M-Civ.A. 04-145, 2005 WL 1653082, *5 n.1 (S.D. Tex. July 6, 2005). Additionally, there is nothing unusual about the federal courts recognizing that certain constitutional rights have remedies other than money damages under 42 U.S.C. § 1983. Similar findings have been noted for other prophylactic Sixth Amendment rights enshrined by the Constitution. *See Bradley v. Health Midwest, Inc.*, 203 F. Supp. 2d 1254, 1259 (D. Kan. 2002) (stating that the court has "been unable to find a single case where the plaintiff was awarded money damages under a § 1983 claim for deprivation of the right to counsel."); *Basheer v. Isola*, Civ. A. No. 86-6206, 1987 WL 7626, *1 (E.D. Pa. March 9, 1987) (no money damages for violation of Sixth Amendment right to counsel). As a result, the only remedy available to the Petitioner for the alleged violation of his Sixth Amendment speedy trial right would have been the dismissal of the criminal indictment, and he is therefore precluded from seeking money damages herein.

From a logical standpoint, such a rule is completely consistent with this Court's precedent on absolute prosecutorial immunity, discussed *supra*. *See supra* at Part I. Any claim brought under 42 U.S.C. § 1983 based upon allegations that the plaintiff's right to receive a speedy trial had been violated would necessarily name as the defendants those individuals charged with bringing the plaintiff's case to trial: the District Attorney and assistant district attorneys handling the case. However, as this Court has noted, acts such as "whether and when to prosecute [a defendant]" are "intimately associated with the judicial phase of the criminal process" and the prosecutors would therefore be entitled to absolute immunity from

civil damages, even if their intentions were malicious or untoward. *Imber*, 424 U.S. at 427, 430, 430 n.33; *see, e.g.*, *Pierce v. Roberts*, No. 6:06-CV-042 (WLS), 2007 WL 433545, *1 (M.D. Ga. Feb. 5, 2007) (dismissing, *inter alia*, § 1983 speedy trial claim against prosecutor because he was absolutely immune from same). As a result, allowing the recovery of money damages for a Sixth Amendment speedy trial violation would require the Court to create a new judicial exception to the doctrine of absolute prosecutorial immunity when this Court, as recently as its last term, unanimously reaffirmed the principle that "the immunity that the law grants prosecutors is 'absolute.'" *Goldstein*, 129 S.Ct. at 860; *see Springmen v. Williams*, 122 F.3d 211, 213 (4th Cir. 1997) (prosecutors absolutely immune from decisions regarding whether and when to prosecute); *Geter*, 1990 WL 212618 at *1 (dismissing, off hand, plaintiffs § 1983 claim that prosecutors denied plaintiff's right to speedy trial as barred by absolute prosecutorial immunity). Because doing so would contravene this Court's repeated express holdings that prosecutors–the only viable defendants in such an action–are absolutely immune from their conduct related to judicial proceedings, the Petitioner has failed to demonstrate any compelling reason that this Court should grant his Petition merely to reaffirm this same, well-established principal, and, as a result, the Petition should be denied. Sup. Ct. R. 10.

CONCLUSION

For the foregoing reasons, the Court should deny the Petitioner's Petition for Writ of Certiorari.

Respectfully submitted,

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APPENDIX

APPENDIX A

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

CIVIL ACTION NO. 4:06CV120

JURY TRIAL DEMANDED **42 U.S.C. §1983**

[Filed June 12, 2006]

John Gerard Quinn,	)
	)
Plaintiff,	)
	)
vs.	)
	)
John Roach, individually and in his official capacity as Collin County District Attorney, **Gail Leyko, Manuel Gonzales, Curtis Howard**, **Kristi Tyler**, and **Michelle Voirin**, individually and in their official capacities as Collin County Assistant District Attorneys, **Jose Quiles** and **Five John Doe Defendants,** individually and in their official capacity as McKinney, Texas police officers, **Laurie Houston** and **Katie Quinn**, individuals, **Collin County, Texas**,	)

and the **City of McKinney, Texas,**)
)
Defendants.)
)

SECOND AMENDED COMPLAINT

Plaintiff John Gerard Quinn files this Second Amended Complaint alleging violations of Plaintiff's common-law, statutory, and clearly-established constitutional rights by the Defendants, and seeks money damages, costs, and injunctive relief all as prayed for herein. This First Amended Complaint is filed before any responsive pleadings have been filed. FRCP 15(a).

This case tells a story of deception, immorality, greed, incompetence, and pain that is difficult to believe could actually happen in 21st century America under the watchful eyes of supposedly-well-trained public servants. But it did.

PARTIES

1. Plaintiff John Gerard Quinn is an individual resident of McKinney, Collin County, Texas.

2. Defendant John Roach is an individual resident of Collin County, Texas, and is and was the duly-elected District Attorney for Collin County, Texas at all times relevant to this case. He has already been served with process, and is before the Court for all purposes.

3. Defendant Gail Leyko, formerly known as Gail Falco, is an individual, resident of Collin County,

Texas, and is or was an assistant district attorney for Collin County, Texas at all times relevant to this suit. She has already been served with process, and is before the Court for all purposes.

4. Defendant Manuel Gonzales is an individual, resident of Collin County, Texas, and is or was an assistant district attorney for Collin County, Texas at all times relevant to this suit. He has already been served with process, and is before the Court for all purposes.

5. Defendant Curtis Howard is an individual, resident of Collin County, Texas, and is or was an assistant district attorney for Collin County, Texas at all times relevant to this suit. He has already been served with process, and is before the Court for all purposes.

6. Defendant Kristi Tyler is an individual, resident of Collin County, Texas, and is or was an assistant district attorney for Collin County, Texas at all times relevant to this suit. She has already been served with process, and is before the Court for all purposes.

7. Defendant Michelle Voirin is an individual, resident of Collin County, Texas, and is or was an assistant district attorney for Collin County, Texas at all times relevant to this suit. She has already been served with process, and is before the Court for all purposes.

8. Defendant Jose Quiles is an individual, resident of Collin County, Texas, is and was employed as a McKinney, Texas police officer at all times relevant to

this suit. He has already been served with process, and is before the Court for all purposes.

9. Defendant Laurie Houston is an individual, resident of Denton County, Texas. She has already been served with process, and is before the Court for all purposes.

10. Defendant Katie Quinn is an individual, resident of Denton County, Texas. She has already been served with process, and is before the Court for all purposes.

11. Defendant Collin County, Texas is a county organized under the laws of the State of Texas. It has already been served with process, and is before the Court for all purposes.

12. Defendant City of McKinney, Texas is a municipality organized under the laws of the State of Texas. It has already been served with process, and is before the Court for all purposes.

13. For ease of reference and not by way of limitation, Defendants John Roach, Gail Leyko, Manuel Gonzales, Michelle Voirin, Curtis Howard, and Kristi Tyler are sometimes hereafter referred to separately by their last names or collectively as the "District Attorney Defendants." At present, it is not known which of the individual District Attorney Defendants actually took particular actions, so they are herein referred to collectively. Discovery may reveal better details of their actual, individual participation. Plaintiff reserves the right to amend this Complaint when the actions taken by the

individual District Attorney Defendants have been determined.

14. For ease of reference and not by way of limitation, Defendants Laurie Houston and Katie Quinn are sometimes hereafter referred to as "Houston" and "Katie," respectively, and collectively at times as the "Family Defendants."

VENUE AND JURISDICTION

15. Venue is proper in the Eastern District of Texas in accordance with 28 U.S.C. §1391, since one or more of the Defendants reside in Collin County, Texas and a substantial part of the events or omissions giving rise to Plaintiff's claims occurred in this District.

16. Jurisdiction is proper in this Court in accordance with 28 U.S.C. §1331 and 42 U.S.C. §1983. The Court has supplemental jurisdiction over Plaintiff's state-law claims in accordance with 28 U.S.C. §1367.

JURY DEMAND

17. Plaintiff hereby demands trial by jury. The jury fee, if required, will be submitted by Plaintiff when the Court orders it paid.

BACKGROUND FACTS

General History of the Case.

18. In 1982, Plaintiff and Laurie Quinn (now Houston) were married. The Quinns had two children

in this marriage: a son, Brian Quinn (DOB __/__/84), and a daughter, Katie Quinn (DOB __/__/87)(birth dates omitted per court rules).

19. In or around 1991, Plaintiff discovered that Houston was having an extra-marital affair and the couple promptly divorced. Following this divorce, Plaintiff was awarded primary custody of the Quinn's children. The Quinn children lived with Plaintiff 20 days per month, and he raised them without any financial or other assistance from Houston. Both Plaintiff and Houston later remarried other people, which marriages also ended in divorce. Defendant Houston kept her last name from this subsequent marriage.

20. Following her divorce from Plaintiff, Houston embarked on a lifestyle of decadence and license that would cause most Hell's Angels to blush. One brief sexual liaison quickly followed another and Houston entered—and apparently enjoyed—the seedy underworld of illegal drug trafficking and use, wild parties, and frequent and depraved social encounters, sexual and otherwise.

21. Plaintiff knew little to nothing of Houston's immoral lifestyle, but when Brian and Katie visited their mother, the Quinn children could not help but be exposed to it. Houston constantly denigrated Plaintiff and tried to persuade the Quinn children to move in with her full time—telling them that they would receive child support from Plaintiff and that she would then be able to buy them anything they wanted. Brian Quinn was appalled and disgusted with his mother's new lifestyle, but Katie was apparently fascinated by it.

22. Plaintiff was a sometimes-harsh critic of many of Houston's lifestyle choices, even just the limited things he knew about which were only a very small part of what was actually going on in Houston's life and home.

23. When she was 12 years old, Katie announced that she wanted to live with her mother. This move was brought about because Katie (correctly, it turns out) surmised that her mother would be far more liberal in the "freedoms" granted to Katie than was Katie's father, and Katie desired to have more license to do with her young life as she pleased. Katie moved in with her mother in or around May 2000.

24. When Katie began living with Houston, and unknown to Plaintiff, Houston began allowing Katie to enter Houston's slimy world with a vengeance. With her mother's knowledge and encouragement, Katie began to use illegal drugs, to stay away from home overnight, and to have sexual relations with numerous, serial paramours, often in the same house in which Katie and her mother were living. In fact, Houston allowed one of Katie's older boyfriends to move in with them so Katie—who at that time was only 14 or 15 years old—could have illicit, illegal sex with that young man whenever she liked. The license Katie had hoped her mother would allow was abundantly provided this teenage girl. Houston treated Katie as a "buddy" rather than as a dependent child who needed parental guidance and assistance.

25. Plaintiff was unaware of these facts until after his arrest. Plaintiff knew nothing of the live-in arrangements with Katie's boyfriend, the use of illegal drugs, or the lack of parental control Houston

exhibited toward Katie. Had Plaintiff known what was going on in the Houston household, he would have put a stop to it immediately.

26. Even given the past living arrangements and respective financial contributions of Plaintiff and Houston toward raising their children, and while under no legal compulsion to do so, Plaintiff generously continued to pay for Katie's expenses, including school clothing, medical insurance, dance lessons, singing lessons, gymnastics lessons, cheerleading lessons, etc. to help support his daughter. Plaintiff also attended Katie's extra-circular activities such as choir recitals, track meets, basketball games, and volleyball games as often as possible. This apparently was not enough for Houston.

27. In or around July 2002, when Brian Quinn turned 18 years old, Houston—without discussion or warning—sued Plaintiff in court for additional child support for Katie. To avoid a court fight, Plaintiff agreed to pay child support to Houston in the amount of $1,050.00 per month, plus medical insurance and 50% of un-reimbursed medical expenses. Subsequently, Houston began cutting off virtually all of Katie's access to Plaintiff. Plaintiff therefore had almost no idea what was happening in that household, except from sporadic reports made by Brian and Katie from time to time.

28. On July 14, 2003, Plaintiff's child support obligations were reduced to $500.00 per month plus 50% of un-reimbursed medical expenses due to his having been laid off from his job. Plaintiff and Houston were ordered to go to mediation in an attempt

to resolve what had by then become a bitter battle over child support and access to Plaintiff's daughter, Katie.

29. Mediation began in or around April 2004, just prior to Plaintiff's arrest. Plaintiff, at that time employed as a part-time consultant on a project-by-project basis, agreed to pay Houston $663.74 per month child support plus 50% of un-reimbursed medical expenses, with the stipulation that an additional $250.00 per month would be given directly to Katie, for a total of $913.74 per month. This stipulation was necessary due to Plaintiff's informed belief that Houston was using all or most previous child-support monies for, among other improper purposes, remodeling her house rather than taking care of Katie's needs.

The Child Support Battle Rages On.

30. Houston was clearly not satisfied with the mediated child-support arrangements. However, given the history of Plaintiff's full, solo support of Katie (and Brian) for a nine-year period from 1991 to 2000, his continued support of Katie from 2000 to 2004, given Houston's profligate waste of previous child-support monies, and given the illegal and morally-abhorrent lifestyle Houston was living and allowing Katie to live, Houston suspected (or perhaps her lawyer told her) that her chances of getting any court to grant her any larger sums of child support, purely on the merits of her request, were small to non-existent. Houston thus decided she needed an "edge" in the child-support war.

31. Defendant Houston, employing her grateful and gullible "buddy" Katie in her plans, implemented an all-too-common scheme that almost destroyed

Plaintiff's life. The motives for this scheme by Houston and Katie were as old as mankind itself: greed and revenge.

32. Houston devised that if she made sufficiently-egregious accusations of criminal behavior against Plaintiff, then Plaintiff would be willing to acquiesce to her unreasonable demands for child support monies, and Houston could thereby avoid a court showdown at which she would likely have not received the full amount of child support she was seeking, if indeed she received any at all. The plan was to get Plaintiff to "surrender" the child-support battle before the first shot was fired in court. However, since Plaintiff had no criminal record and engaged in no illegal or immoral activities, Houston did not have the type of ammunition that would be sufficiently devastating to scare Plaintiff into submission.

33. Defendant Katie, due in no small measure to her decadent, mother–approved lifestyle, had naturally been having severe psychological problems. She had been diagnosed with bi–polar disorder, was becoming a consummate liar, was frequently under the influence of illegal drugs, suffered depression, was sexually promiscuous, and had serious problems with authority.

34. In May 2004, Katie attempted suicide following her breakup with a boyfriend. The breakup was precipitated by the boyfriend's discovery of Katie's sexual infidelity. Supposedly distraught at the breakup, and compounded by her other psychological problems, Katie attempted to take her own life by ingesting a large quantity of prescription drugs.

35. On July 14, 2004, Katie was arrested for shoplifting. On the day she was arrested for shoplifting, Katie again allegedly tried to commit suicide, this time by slashing her wrists with a knife.

36. Given her emotional condition and recent legal problems, Katie would prove the perfect tool for Houston's use in concocting her plot to destroy Plaintiff and thereby "win" the child-support battle.

The Defendants' Nefarious Scheme is Hatched.

37. During an alleged struggle to wrest the alleged suicide knife from Katie on July 14, 2004, Katie allegedly told her mother that Plaintiff had sexually molested her when Katie was either six or eight years old. In truth, either Houston convinced Katie to fabricate this story of alleged sexual abuse against Plaintiff to support the child-support battle plan, or Katie herself fabricated the story of the alleged molestation in order to deflect attention away from her shoplifting incident.

38. Even if Katie made up the accusation of abuse on her own without Houston's prompting, which is unlikely, Houston had literally no reason to believe Katie's story and many credible reasons to not believe it. However, Houston believed that such infamous charges, and the criminal liability such charges entailed, would be sufficient to bludgeon Plaintiff into submission in the child-support fight. Houston also hoped such charges would destroy Plaintiff's life, and thus exact revenge on Plaintiff for his criticism of her lifestyle and for any other imagined harms which Plaintiff had supposedly inflicted on Houston during and following their marriage. Houston's motives in

reporting this fabricated instance of "child sexual abuse" to authorities thus exhibited the most extraordinary and diabolical bad faith.

Denton County CPS Becomes Involved.

39. Houston first brought the false charges of child sexual assault to the Denton County, Texas office of Child Protective Services (CPS) on July 14 or 15, 2004, where she filed a formal complaint against Plaintiff accusing him of raping Katie.

40. At the time of this report, Katie was 16 years old.

41. Depending on which report is credited, this alleged abuse began when Katie was either six, eight, or nine years old and continued until Katie was twelve or so. No charges were made of continuing or more-recent abuse or harm.

42. This complaint was supported with Katie's affidavit or statement, which document was obviously not authored by Katie but by someone else—probably Houston.

43. Katie's affidavit or statement filed with the CPS charge was full of lies, including that Katie had not seen her father in over four years, when in fact, Plaintiff had seen Katie and recently purchased a car for Katie in January 2004.

44. Denton County CPS officials conducted an investigation into the charges. However, they did not fulfill their statutory duties to interview or notify Plaintiff (statutes require that CPS notify Plaintiff of

the charges and the progress of the case since he is the accused and because he is the father of the complaining witness/child). This failure to notify and interview Plaintiff was not merely a violation of state law, but would play itself out badly for Plaintiff in the police action and prosecution which soon followed in Collin County.

45. On July 30, 2004, Denton County CPS workers forwarded to Defendant Jose Quiles, an officer serving with and employed by the McKinney, Texas police force, a videotape of a "forensic interview" with Defendant Katie that had been conducted by CPS investigator Dawn Wells on July 21, 2004. No formal criminal charges were filed against Plaintiff at this time. The exact contents of this videotape interview are presently unknown to Plaintiff, but given that CPS dropped its investigation shortly after this videotape was made with the notation "unable to determine," one can surmise that the tape does not contain any credible evidence supporting charges of sexual or other abuse by Plaintiff. Although he received the tape on July 30, 2004, Defendant Quiles for some reason did not review the videotape interview until August 9, 2004.

The McKinney Police Weigh In.

46. On August 12, 2004, apparently dissatisfied with the speed and effect with which Denton County CPS was proceeding with its investigation, Houston gave McKinney police a voluntary statement and filed a formal criminal complaint against Plaintiff accusing him of child sexual assault of Katie.

47. The complaint filed by Houston falsely accused Plaintiff of child sexual abuse. Houston also falsely and scurrilously claimed that Plaintiff was "an alcoholic and a flight or suicidal (sic) risk."

48. An investigation was undertaken by Defendant Quiles, and perhaps by the John Doe Defendants, of the charges levied against Plaintiff by Houston. This investigation included a statutory SANE inquiry, which was conducted over the objections of Houston, and a sexual-assault examination of Katie by a registered nurse. However, the investigation did not include any investigation into the trustworthiness or reliability of Houston or Katie as witnesses.

49. Plaintiff does not presently know exactly when this complaint by Houston first came to the attention of Defendant Quiles. However, Defendant Quiles apparently accepted every allegation made by Houston at face value, even though he had no independent corroboration of any of the allegations made therein and even though the entire investigation pointed toward the falsity of the charges.

50. On August 26, 2004, Defendant Quiles received a registered nurse's affidavit relating to the physical examination of Defendant Katie, which refuted the possibility of any alleged sexual assault on Katie when she was a small child or at any other time.

51. On September 2, 2004, Defendant Quiles received the SANE report on Katie, which was "normal," indicating that no signs of sexual assault or trauma—past or present—were noted.

52. Upon information and belief, Defendant Quiles had no contact with Houston or Katie prior to the complaint being filed in August 2004, and he made no investigation into the past history of informants Houston or Katie or their relationship with Plaintiff.

53. Had any reasonable officer in Defendant Quiles's position investigated and learned the facts concerning (a) the child-support battle then pending, (b) Katie's disturbed emotional condition and propensity to lie, (c) the exonerating physical evidence then available, and (d) the improper financial motivations of Houston and Katie, that officer would never have believed, under the totality of the circumstances, that he had probable cause or legal justification to arrest Plaintiff.

54. Defendant Quiles thus knew or should have known that he had no reasonable basis to believe Houston and Katie were trustworthy or reliable, and as a matter of law could not base his request for an arrest warrant on their statements or information they provided.

55. On September 8 or 9, 2004, utterly ignoring the totality of the circumstances, including all of the extrinsic, third-party evidence indicating that no sexual assault had occurred as alleged and without investigation or inquiry into the reliability or trustworthiness of the informants, without interviewing Plaintiff, and without making any further investigation into the charges, Defendant Quiles swore out an affidavit and applied for an arrest warrant for Plaintiff, stating in that affidavit: "Based on the above information and investigation, Affiant [Quiles] has reason to believe, and does believe, that [Plaintiff] has

committed the offense of Aggravated Sexual Assault of a Child F-1 as defined in the Texas Penal Code, against the Peace and Dignity of the State."

56. Pointedly, in his Affidavit Defendant Quiles *listed* the CPS Case Report, the forensic videotape, and the report of the registered nurse, but neglected to tell the magistrate issuing the warrant that the videotape, the nurse's report, the CPS Case Report, and the SANE report (which Quiles did NOT list in his affidavit but which had been in his possession since 9/2/04) all provided ***exculpatory*** evidence which tended to make the allegations of abuse highly suspect if not provably false.

57. Defendant Quiles had no probable cause, legal justification, or even reasonable suspicion to believe a crime had been committed by the Plaintiff. Thus, Defendant Quiles had no basis to believe the arrest warrant was proper or to request the arrest warrant under the totality of the circumstances.

58. By not mentioning or listing the SANE report in his Affidavit, Defendant Quiles falsely stated or implied in his Affidavit that the SANE report on Katie was not available on September 8, 2005. Instead, he falsely stated that "no other records [other than the RN's affidavit] are applicable since [Katie] was a voluntary commitment. A SANE examination is scheduled for [Katie] on 09-01-04." This false statement was obviously designed and intended to keep secret from the magistrate the existence of this exonerating evidence, and was intentionally misleading at best.

59. In the CPS case summary all participants—including Defendant Curtis Howard, the SANE nurse, and Case Worker Dawn Todd—are quoted as doubting Katie's story of sexual abuse due to inherent inconsistencies in, and the utter implausibility of, the story being told. This information was also not revealed to the magistrate by Defendant Quiles when he obtained the arrest warrant.

60. When Defendant Quiles went to obtain the arrest warrant for Plaintiff, he had in his possession the questionable accusation of the complaining witness (Katie, whom he knew or should have known to be a very disturbed young woman prone to lying and with strong motives to do so), the hearsay report of Houston (whom he knew or should have known was a bitter ex-wife currently involved in a contentious child-support dispute with Plaintiff), and mountains of exonerating evidence provided by the only objective, third-parties involved, including the written report of a licensed nurse, the written SANE report, the written CPS case summary, the personal suspicions of Defendant Howard, CPS worker Dawn Todd, and perhaps others, and/or the dismissal (or imminent dismissal) for lack of evidence of identical charges pending with Denton County CPS.

61. The totality of the circumstances known to Defendant Quiles thus showed that the charges against Plaintiff were false.

62. All evidence which tended to exonerate Plaintiff or which caste doubt on his guilt was negligently, intentionally, or recklessly withheld from the magistrate by Defendant Quiles.

63. No reasonable magistrate would have issued an arrest warrant for Plaintiff if all relevant evidence and information had been provided to the magistrate by Defendant Quiles, and Defendant Quiles knew this when he applied for the warrant. Defendant Quiles's judicial deception was therefore intentional and was the "but for" cause of the warrant being issued.

64. Defendant Quiles obtained an arrest warrant for Plaintiff on September 9, 2004 when he did not have probable cause to believe an offense had been committed, without the benefit of a full investigation, and/or by negligent or reckless omission of material facts, all of which undoubtedly influenced the magistrate's decision on whether to find probable cause and whether to issue the arrest warrant. Defendant Quiles thus committed negligent judicial deception.

65. In the alternative, Defendant Quiles knew about and intentionally withheld this information from the magistrate in order to avoid the chance that the magistrate would deny his application for a warrant as lacking probable cause, and thus committed intentional judicial deception.

66. It is clear that Defendant Quiles either intentionally, negligently, or recklessly omitted this exonerating evidence from the materials presented to the magistrate in pursuit of the arrest warrant. Instead, Quiles merely mentioned the *existence* of only some of the documents, and he did not tell the magistrate anything about their (exculpatory) content, so as to knowingly give the false impression that they "supported" the warrant.

67. Upon information and belief, at no time did Defendant Quiles tell the magistrate about the credible, unimpeached, exonerating, disinterested-third-party evidence which existed in the files of Defendants Quiles and the City of McKinney, and which provided more-than-sufficient proof that the charges made against Plaintiff by Houston and Katie were wholly fabricated, or at the very least, not supported by any facts, and thus called into question the probable cause or legal justification necessary for issuance of an arrest warrant.

68. No reasonably prudent police officer in the position of Defendant Quiles, in the same or similar circumstances and possessing the same facts within Defendant Quiles's knowledge and of which he had reasonably trustworthy information, could have believed that any sexual assault had occurred as alleged, and therefore, any reasonably prudent officer in Quiles' position would not have believed his actions were justified, to wit: he would not have believed under the totality of the circumstances that he had probable cause or legal justification to arrest, he would not have sworn out an affidavit, he would not have pursued an arrest warrant, and he would not have arrested Plaintiff.

69. These actions by Defendant Quiles, including exercise of his personal deliberation, decision-making, and judgment, were undertaken in bad faith.

70. Defendant Quiles, in obtaining the arrest warrant, violated Plaintiff's U.S. clearly-established constitutional rights to be free from unreasonable searches and seizures, his actions demonstrate deliberate indifference to Plaintiff's clearly-established

constitutional rights, and he acted objectively unreasonably in light of clearly established law at the time the warrant was obtained, and he had fair warning that he was violating clearly-established law.

71. On September 10, 2004, Denton County CPS dropped its investigation against Plaintiff finding no cause to believe the charges were real, with the notation "unable to determine." Upon information and belief, Denton County CPS notified the District Attorney Defendants and/or Defendant Quiles of this action on or near that date. However, once again, Defendant Quiles either intentionally or recklessly failed to inform the District Attorney's office of this very relevant action by CPS, and/or the District Attorney's office failed to so inform the magistrate.

72. Upon information and belief, Defendant Quiles did not tell the magistrate about the exonerating evidence in their possession, and failed to include known facts that were clearly critical to the probable-cause determination, and thus illegally influenced the judge's decision whether to issue the warrant. This deliberate concealing of exculpatory evidence by Defendant Quiles tends to prove that the procuring of the warrant and subsequent arrest of Plaintiff, in addition to being violative of Texas statutory law and the state and federal due process rights of the Plaintiff, were motivated by personal animosity, malice, and glaring bad faith.

73. **Policies.** Upon information and belief, Defendant City of McKinney has special customs, policies, practices, procedures, or rules which guide McKinney city police officers in matters relating to

investigation of criminal complaints and securing arrest warrants based on probable cause.

74. Plaintiff asserts that these customs, policies, practices, procedures, or rules compel or require unconstitutional action, which action executes or implements a policy or a decision officially adopted or promulgated by those whose acts may fairly be said to represent or implement the official policy of the City of McKinney.

75. **No Policies.** In the alternative, Defendant City of McKinney does not have any customs, policies, practices, procedures, or rules governing the conduct of McKinney city police officers in such matters, and thus has failed and refused to provide a proper training and environment in which city police-department employees may learn, know, and practice actions that do not violate the clearly-established constitutional rights of citizens with whom they come in contact.

76. City of McKinney policymakers know that police officers are routinely called upon to arrest criminal suspects, and that many or most such arrests proceed based on warrants that police officers obtain from magistrate judges. Thus, the need to train police officers in the proper methods of obtaining such warrants is so obvious that failure to do so can properly be characterized as deliberate indifference to clearly-established constitutional rights.

77. Defendant City of McKinney failed to train its police officers, including Defendant Quiles, in the proper methods and procedures for obtaining arrest warrants, which failure to train amounts to deliberate

indifference toward the civil rights of persons with whom the police come into contact to the point where the City's failure can be seen as a city policy or custom.

78. Plaintiff asserts that such special customs, policies, practices, procedures, or rules—or the deliberately indifferent, customary failure to establish or neglect in enforcing proper customs, policies, practices, procedures, and rules—lead directly to, or played a part in, the violations of law described herein, to wit:

(A) failure or refusal to provide all relevant information to magistrates issuing arrest warrants, including information not supportive of probable cause;

(B) inept or non-existent investigation of citizen complaints;

(C) inability to investigate or determine the credibility or reliability of informants, or of the information provided by informants;

(D) judicial deception in applying for and securing arrest warrants without probable cause, and

(E) failure or refusal to supplement information obtained following issuance of arrest warrants if said information casts doubt on the propriety of the warrant,

all in violation of the clearly-established Constitutional and statutory rights of persons accused of crimes in Collin County, including the Plaintiff.

79. The harm Plaintiff suffered in this case was an obvious consequence of, and proximately caused by, the existence of, and compliance with, the aforesaid customs, policies, practices, procedures, or rules by the Defendants, or some of them.

80. **Policies Routinely Ignored.** In the further alternative, even if the City of McKinney has adequate policies and procedures relating to these activities, McKinney police officers routinely and habitually violate such policies and procedures, and supervisory personnel in the department and City policymakers know of such routine violations of department policies and procedures and routinely "look the other way" and impart no discipline or inadequate discipline, when such violations occur to the point where it can be said that the actual custom and practice of the City of McKinney is to neglect or refuse to enforce written policies and procedures already on the books. This systematic maladministration of written rules is approved, acquiesced, or encouraged by City of McKinney policymakers and supervisory personnel and, hence, by the City of McKinney itself.

The Warrant is Served and Arrest Accomplished.

81. McKinney police, including Defendant Quiles and the John Doe Defendants, served and executed the September 9, 2004 arrest warrant on September 12, 2004—two days ***following*** the dismissal of all charges by Denton County CPS[1] Plaintiff was arrested at his

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[1] Plaintiff does not presently recall if Officer Jose Quiles was physically present at the time of the arrest. He recalls there were

home and booked on first-degree felony charges that day. He bonded out shortly after his arrest.

82. During the arrest, Defendants Quiles and the John Doe Defendants interviewed and spoke with Brian Quinn who told them that the charges against his father were totally false, that they had been fabricated by his mother and sister, and that his father was innocent. The police officers ignored Brian's statement and proceeded with the arrest in spite of this *additional* exonerating evidence—evidence wholly consistent with the other voluminous, exonerating evidence available to the police.

83. Due to his not being informed of the existence, progress, or dismissal of the Denton County CPS investigation, the registered nurse's findings, or the SANE report, Plaintiff was unable to effectively counter his alleged culpability using this exonerating information until much later, following Freedom of Information Act requests that were successfully contested (in part) by McKinney police and/or the Collin County District Attorney's office, and thus were not even partially fulfilled until September 2005. Even now, these FOIA requests have not been completely fulfilled at the date of this Second Amended Complaint due to continuing opposition by the Collin County District Attorney's office or others.

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five male and one female officer present. Discovery should reveal the exact identities of the arresting officers. Plaintiff reserves the right to amend this Complaint, if appropriate, to name additional defendants once this discovery has been done.

84. Plaintiff is still attempting to obtain full information and complete records from governmental agencies, including Denton County CPS, the Collin County District Attorney's office, and McKinney police, who have to date refused Plaintiff's requests to voluntarily produce those records. The prosecution's failure to provide, or suppression of, evidence favorable to Plaintiff violates not only Plaintiff's clearly-established statutory rights, but his clearly-established constitutional rights to due process under the U.S. constitution as well.

85. Upon information and belief, Defendants are refusing to comply with these requests because the information sought contains additional evidence proving malice, official incompetence, and the perhaps-intentional and thus potentially-career-ending violation of Plaintiff's clearly-established constitutional rights by the Defendants.

86. Even though the Denton County CPS investigation was not dismissed until September 10, 2004, Defendant Quiles did not go back to the court before executing the warrant on September 12, 2004 for a re-evaluation of probable cause in light of this exonerating evidence in spite of his legal obligation to do so.

87. Even if the warrant could be seen as properly **obtained** on September 9, 2004—which it cannot—Defendant Quiles intentionally or recklessly **executed** the warrant at a time (September 12, 2004) when the sole credible information even arguably "supporting" the charges—an active CPS investigation—was no longer viable. On the date the warrant was executed, there was no longer any

probable cause to believe the charges were legitimate, and the arrest should never have occurred and would never have occurred if reasonable state actors had been involved and doing their job correctly.

The District Attorney's Unlawful Delays Following the Arrest.

88. The Collin County District Attorney's office handled Defendant Quiles' police report/affidavit and Houston's 8/12/04 complaint following Plaintiff's arrest.

89. No investigation of the charges against Plaintiff was ever conducted by Defendant Quiles, the District Attorney Defendants, or anyone else following Plaintiff's arrest. In the alternative, any such investigation quickly and conclusively revealed that the charges against Plaintiff were specious and wholly without merit, but the charges were nevertheless not dismissed.

90. In handling the police report and complaint, the District Attorney Defendants knew about, and had full access to, not only the police report, Houston's statement, and Katie's affidavit/statement, but also to the Denton County CPS report dated September 10, 2004 dismissing the identical charges made against Plaintiff as lacking merit, the registered nurse's report showing no abuse had occurred, the SANE report showing no abuse had occurred, and the statement of Brian Quinn taken at the time of Plaintiff's arrest which informed officials that the abuse charges were fabricated and Plaintiff was innocent.

91. The District Attorney Defendants performed no investigation or inquiry into the reliability or trustworthiness of informants Houston and Katie at any time.

92. Controlling Texas state law requires district attorneys to pursue justice, not merely convictions, and they are expressly prohibited by statute from suppressing evidence capable of establishing the innocence of accused persons. Texas Code of Criminal Procedure, Chapter 2, §2.01 provides:

> It shall be the primary duty of all prosecuting attorneys, including special prosecutors, not to convict, but to see that justice is done. They shall not suppress facts or secrete witnesses capable of establishing the innocence of the accused.

93. The District Attorney Defendants intentionally and knowingly ignored and violated Texas Code of Criminal Procedure §2.01, and failed and refused to dismiss the charges against the Plaintiff as soon as they became aware that there was no proof supporting the charges. This obligation was mandatory, and not within the discretion of the District Attorney Defendants.

94. The actions of the District Attorney Defendants, including exercise of their personal deliberation, decision-making, and judgment, were undertaken in bad faith.

95. Rather than drop the charges, the District Attorney Defendants instead delayed disposition of the charges and failed and refused to bring the charges to

the Collin County Grand Jury for over 15 months, during which time Plaintiff languished in the netherworld of "pending criminal prosecution" on the most heinous, infamous, reputation-destroying criminal charge known to mankind.

96. There is no lawful or just cause or excuse for this failure to investigate and subsequent delay by the District Attorney Defendants. Indeed, this delay violated clearly-established, controlling state law and the Plaintiff's clearly-established constitutional rights under the Fourth, Fifth, Sixth, and Fourteenth Amendments to the U.S. Constitution to be free from unreasonable seizure and unlawful prosecution, and to enjoy procedural and substantive due process, equal protection, speedy trial, and governmental compliance with controlling law.

97. Texas Code of Criminal Procedure §32.01 provides as follows:

> When a defendant has been detained in custody or held to bail for his appearance to answer any criminal accusation, the prosecution, unless otherwise ordered by the court, for good cause shown, supported by affidavit, shall be dismissed and the bail discharged, if indictment or information be not presented against such defendant on or before the last day of the next term of the court which is held after his commitment or admission to bail or on or before the 180th day after the date of commitment or admission to bail, whichever date is later.

98. It is a mandatory obligation for Texas state prosecutors, such as the District Attorney Defendants,

to strictly comply with Texas Code of Criminal Procedure §32.01.

99. In Collin County, grand juries sit for terms of six months beginning on January 1 and July 1 of each year. Therefore, the "next term of the court" following Plaintiff's arrest on September 12, 2004 would have begun—**at the latest**—on January 1, 2005 and ended on June 30, 2005. However, Plaintiff's case was not brought to the Collin County grand jury until January 2006, which was seven months **after** the last possible date upon which the statute allowed it to be so brought.

100. The District Attorney Defendants thus intentionally and knowingly ignored and violated Texas Code of Criminal Procedure §32.01, and failed and refused to take required administrative action to either dismiss the charges against Plaintiff or bring those charges to the Collin County grand jury for resolution within the time period required by state law. This obligation was mandatory, was an administrative function, and was not within the discretion of the District Attorney Defendants.

101. In the alternative, if discretionary, the District Attorney Defendant's actions in delaying prosecution were not objectively reasonable in light of then clearly established law, and they had fair warning that they were violating clearly-established law.

102. Defendant Roach is and was the duly-elected District Attorney for Collin County, Texas at all times relevant to this case.

103. Defendant Roach is and was the policy maker for the Collin County District Attorney's office, and/or is one whose edicts or acts may fairly be said to represent the official policy of Collin County relating to all phases of the investigation and prosecution of crimes in Collin County.

104. Defendant Roach is and was a person whose actions and statements establish governmental policy in and for Collin County, Texas.

105. Defendant Roach is and was statutorily responsible for the conduct of employees of the District Attorney's office, including hiring, training, supervising, and disciplining the employees of that office, who included the other District Attorney Defendants.

106. Defendant Roach and his subordinates have engaged in a custom, practice, and pattern of improperly hiring, failing to train, inadequately supervising, and improperly disciplining or failing to discipline assistant district attorneys for violations of state law which amounts to a deliberate indifference to the clearly-established rights of persons with whom that office comes into contact, including Plaintiff.

107. Defendant Roach participated in, acquiesced to, or ratified the common-law, statutory, and Constitutional violations committed by the District Attorney Defendants described herein. Specifically, Defendant Roach knew about, facilitated, condoned, approved, or "turned a blind eye for fear of what he might see" toward the conduct of the District Attorney Defendants described herein, which caused, facilitated, and/or contributed to the violation of Plaintiff's

clearly-established common-law, statutory, and constitutional rights.

108. **Policies.** Upon information and belief, Defendant Collin County has special customs, policies, practices, procedures, or rules which guide the Collin County District Attorney and employees of that office in matters relating to criminal complaints involving child sex crimes, and compliance with these special customs, policies, practices, procedures, or rules lead directly to the violations of Plaintiff's clearly-established constitutional rights detailed herein.

109. Plaintiff asserts that these customs, policies, practices, procedures, or rules compel or require unconstitutional action, which action executes or implements a policy or a decision officially adopted or promulgated by those whose acts may fairly be said to represent or implement the official policy of Collin County.

110. **No Policies.** In the alternative, Defendant Collin County should have, but does not have, any customs, policies, practices, procedures, or rules governing the conduct of its district attorneys in such matters, and thus has failed and refused to adopt policies that would have provided a proper environment in which county officials and employees may learn, know, and practice actions that do not violate the Constitutional rights of citizens with whom they come in contact, and Collin County knew the likely consequences of failure to adopt such policies would be deprivation of civil rights.

111. Plaintiff asserts that such special customs, policies, practices, procedures, or rules—or the deliberately indifferent failure to establish or neglect in enforcing proper customs, policies, practices, procedures, and rules—lead directly to, or played a part in, the violations of law described herein, to wit:

(A) inept or non-existent investigation of citizen complaints;

(B) failure or refusal to supplement information obtained following arrest if said information casts doubt on the propriety of the arrest, and

(C) failure or refusal to comply with state laws requiring prosecution or dismissal of actions within a fixed time period,

all in violation of the clearly-established constitutional and statutory rights of persons accused of crimes in Collin County, including the Plaintiff.

112. The harm Plaintiff suffered in this case was proximately caused by the existence of, and compliance with, the aforesaid customs, policies, practices, procedures, or rules by the Defendants, or some of them.

113. **Policies Routinely Ignored.** In the further alternative, even if Collin County has adequate policies and procedures relating to these activities, Defendant Roach and the District Attorney Defendants routinely and habitually violate such policies and procedures, and supervisory personnel in the district attorney's office, including Defendant Roach, know of such routine violations of official policies and

procedures and routinely "look the other way" and impart no discipline or inadequate discipline, when such violations occur to the point where it can be said that the actual custom of Collin County is to neglect or refuse to enforce written policies and procedures already on the books. This systematic maladministration of written rules is approved, acquiesced, ratified, or encouraged by Collin County policymakers and supervisory personnel (including Defendant Roach) and, hence, by Collin County itself.

114. Plaintiff asserts that the harm he suffered in this case was proximately caused by the routine and habitual failure to comply with the aforesaid customs, policies, practices, procedures, or rules by the District Attorney Defendants, or some of them, and this unconstitutional action executes or implements a policy or a decision officially adopted or promulgated by those whose acts may fairly be said to represent official policy in Collin County.

115. Plaintiff asserts that Collin County and Defendant Roach do not and did not adequately train or supervise Collin County's assistant district attorneys regarding the state-law requirements of fair and diligent prosecution, including compliance with Texas Code of Criminal Procedure §§2.01 and 32.01, and this failure to train amounts to deliberate indifference toward the clearly-established Constitutional rights of persons in the domain of Collin County, including Plaintiff.

116. Plaintiff asserts that this customary or policy-based lack of training is supported by the fact that at least five separate assistant district attorneys all identically failed to obey the law in exactly the

same manner, which further demonstrates and proves negligence, deliberate indifference, and reckless disregard by the District Attorney Defendants toward the clearly-established constitutional and statutory rights of persons accused of crimes in Collin County, including Plaintiff.

117. Upon information and belief, the District Attorney Defendants have not suffered or been given any discipline, punishment, or other negative consequences from their actions described in this suit.

118. Plaintiff asserts that the statutory and Constitutional rules and laws described herein as having been violated by the District Attorney Defendants were well-known and clearly-established in 2004, and any reasonable person in the position of the District Attorney Defendants would have known about and obeyed these well-known and clearly-established rules and laws.

119. In light of such customs, policies, practices, procedures, and rules, and in light of the existence of express statutes purposefully designed to ensure fair prosecution and to prevent inordinate delays in prosecutions and the consequent harm of such actions, Plaintiff asserts that the conduct of the District Attorney Defendants was allowed and enabled by the deliberate indifference of Collin County and Defendant Roach to prevent such occurrences and abuses.

Defendants Have No Immunity.

120. Plaintiff asserts that Defendant Quiles does not have any immunity due to his judicial deception and his reckless or intentional failure to bring

exonerating evidence to the attention of the magistrate or the court after he obtained it.

121. Plaintiff asserts that the District Attorney Defendants do not have any immunity due to their violation of Texas Code of Criminal Procedure §§2.01 and 32.01, intentional failure to take reasonable precautions to avoid harm to Plaintiff, and because their actions complained of herein were non-judicial and administrative in function and not part of the advocacy of their office before a court of law.

122. None of the Defendants are protected by sovereign immunity, which is only afforded to states under the U.S. Constitution, 11th Amendment.

123. Neither Collin County nor the City of McKinney have any form of immunity recognized under law or, in the alternative, it has been waived.

124. There is no immunity for requests for injunctive relief.

125. To the extent necessary, and in the alternative, Plaintiff asserts that governmental or official immunity, if any, the Defendants that might otherwise enjoy has been statutorily waived by Texas Civil Practice & Remedies Code §§101.021, 101.025, and 101.0215 for the state-law claims made herein (i.e., negligence, false arrest/detention, and malicious prosecution), and that no such waiver is necessary for the federal causes of action under 42 U.S.C. §1983.

126. Neither of the Family Defendants have any form of immunity recognized under law.

The Plaintiff's Harm and His Efforts to Avoid Harm.

127. Plaintiff has been unable to obtain his ordinary form of employment because applications for the work he does require that job applicants disclose whether they have ever been arrested.

128. For this reason, the unlawful arrest of Plaintiff has negatively impacted, and will continue to negatively impact in the future, his ability to obtain employment, in that he must now **and forever** inform potential employers that he was previously arrested for a felony—and not just *any* felony, but child sexual assault of his own daughter, a crime more heinous and infamous than kidnaping, murder, and treason put together. This unfortunate situation will haunt Plaintiff for the rest of his natural life, and creates a stain on his personal and professional reputation incapable of remediation.

129. As just one example from the recent past showing Plaintiff's difficulties in obtaining employment, which example sadly foreshadows his future, Plaintiff found out when he was in the final stages of negotiation for and acceptance of a high-paying consulting job involving EDS that the company would not even *consider* his application as long as these criminal charges were pending.

130. Among the possible reasons for not hiring someone in Plaintiff's circumstance are (a) the public stigma that attaches to having an employee who has been accused of such an infamous charge, and (b) the very real probability that the employee's work might be interrupted in the immediate future—to the

detriment of the employer—due to his mental distractions and absence from work while engaged in discovery and preparing for and attending what could be an extensive criminal trial, not to mention the potentially-*permanent* interruption if convicted.

131. For this and other reasons, Plaintiff was understandably anxious to have the charges either dropped or brought to the grand jury for final resolution.

132. Following his arrest, Plaintiff's civil counsel, Mr. Mark Montgomery, and his criminal defense attorney, Mr. Paul Stuckle, both called the Collin County District Attorney's office repeatedly (often several times a month) for 15 months trying to get the issue resolved so Plaintiff could get on with his life.

133. Additionally, Plaintiff himself filed numerous written complaints relating to these issues with the Texas Department of Family and Protective Services, the Office of Governor Rick Perry, the Office of State Representative Ken Paxton, and Texas Attorney General Greg Abbott, all without success.

134. Plaintiff even took <u>two</u> lie detector tests, one using a professional recommended by the District Attorney's office, and passed both of them. This information was presented to the District Attorney Defendants without apparent effect.

135. All of these calls and pleas, and all of the objective, irrefutable evidence relating to the Plaintiff's innocence of the alleged crime—the pending child-support dispute, Katie's unfortunate, sociopathic condition, Brian's statement, the favorable lie-detector

tests, the CPS final report, and the nurse's and SANE reports—were known to, and utterly ignored by, the District Attorney Defendants.

136. When the telephone inquiries were made, the District Attorney's office personnel, including the District Attorney Defendants herein, or some of them, would make remarks during these calls attempting to explain the delay such as they were "very busy," or would say the file had been "transferred to a new assistant [district attorney]."

137. The prosecution's file apparently went through the hands of at least five different assistant district attorneys, including the District Attorney Defendants, during the 15-month-plus period in which the charges were pending against Plaintiff.

138. Frustrated and short on funds, Plaintiff filed a *pro se* application for writ of habeas corpus on December 14, 2005, in which he asked the District Court to dismiss the complaint. Subsequent to Plaintiff's filing for this writ, the District Attorney—then and only then—scheduled a Grand Jury hearing.

139. Through Plaintiff's attorney (Mr. Montgomery), the District Attorney Defendants attempted to dissuade Plaintiff from proceeding with the Writ of Habeas Corpus hearing, stating that while they could not promise anything, it was likely the case would be "no billed" at the upcoming Grand Jury hearing. Plaintiff refused this request to stand down, having found no reason to believe or trust the District Attorney Defendants after their outrageous treatment of Plaintiff for 15 months.

140. At the hearing on the petition for writ of habeas corpus, the District Attorney Defendants presented no evidence of probable cause to convict Plaintiff on any charges, and presented no "good cause" evidence to justify the delay in bringing the matter to the grand jury in blatant derogation of express state law requiring fair and timely action by their office.

141. The District Court granted Plaintiff's petition for writ of habeas corpus and dismissed the case by order dated January 6, 2006. Plaintiff was then released from bail.

142. A few days **after** the District Court dismissed the complaint, on or around January 10, 2006, the District Attorney Defendants finally took the case to the Collin County grand jury, and the grand jury issued a "no true bill" on the charges, exonerating the Plaintiff. This grand jury proceeding was merely a continuation of the criminal complaint that had already been ordered dismissed by the District Court on January 6, 2006, and thus was undertaken without legal cause and without a valid criminal charge then pending.

143. There are no known, present plans to bring any other complaints against Plaintiff, on this or any other charge.

144. Plaintiff incurred extensive legal fees and expenses due to the filing of false criminal charges and the illegal and inordinate delays of the District Attorney Defendants prior to the filing of this Complaint in the amount of $30,000.00. Plaintiff

continues to incur additional legal fees and expenses for prosecuting the instant action.

145. Plaintiff has suffered, and will in all likelihood continue to suffer, the loss of personal and business reputation, employment opportunities, and income due to the false arrest, malicious prosecution, and the 15-month delay in prosecution.

146. Plaintiff has suffered, and will in all likelihood continue to suffer, humiliation, extreme mental pain and suffering, and severe emotional distress due to the outrageous conduct of the Defendants.

147. Plaintiff suffered a partial nervous breakdown proximately caused by the conduct of the Defendants as described herein.

148. Plaintiff has suffered, and will in all likelihood continue to suffer for the foreseeable future, other manifestations of severe emotional distress such as sleeplessness, headaches including migraine headaches, nausea, confusion, lightheadedness, anxiety attacks, lost appetite, short-term memory loss, night sweats, inability to concentrate, insomnia, paranoia, uncharacteristic and uncontrollable outbursts of rage, uncontrollable crying, and debilitating depression. Plaintiff asserts that such distress was proximately caused by the conduct of the Defendants described herein.

149. Plaintiff has incurred approximately $12,000.00 in past medical expenses consisting of charges for psychiatric and psychological counseling, in-patient treatment and therapy, prescription

medications prescribed for his anxiety and mental distress, and other coincidental damages linked to his medical treatment such as travel expenses, all proximately caused by the conduct of the Defendants described herein.

150. Plaintiff will in all likelihood continue to suffer extreme mental anguish and will require continuing care by medical and mental health professionals, including counseling and therapeutic drug treatment, into the foreseeable future and in an amount not capable of precise determination at this time.

CAUSES OF ACTION

Violation of 42 U.S.C. §1983 (against all Defendants).

151. All factual allegations above are incorporated herein by reference.

152. The Family Defendants are considered "state actors" because they instigated and contributed to the violations of law by the other defendants in this case, and but for their active participation the other state-actor defendants would not have been in a position to violate Plaintiff's clearly-established constitutional rights.

153. Defendants' conduct occurred under color of law.

154. Defendants abused the power or position granted or allowed to them by state law.

155. Defendants' conduct violated Plaintiff's clearly-established constitutional rights to be free from unlawful seizure as protected by the Fourth Amendment to the U.S. Constitution.

156. Defendants' conduct violated Plaintiff's clearly-established constitutional right to a speedy trial as protected by the Sixth Amendment to the U.S. Constitution.

157. Defendants' conduct violated Plaintiff's clearly-established constitutional rights to substantive and procedural due process and equal protection of the laws as protected by the Fifth and Fourteenth Amendments to the U.S. Constitution.

158. Defendants' conduct violated clearly-established Texas state laws prohibiting malicious criminal prosecution.

159. District Attorney Defendants violated clearly-established Texas statutory law prohibiting delays in prosecution (Tex. Code Crim. Proc. §32.01) and relating to their duties as prosecutors (Tex. Code Crim. Proc. §2.01).

160. Defendants acted, or failed to act, with deliberate indifference to Plaintiff's clearly-established constitutional rights, and their conduct was not objectively reasonable in light of then clearly established law.

161. Defendants' conduct proximately caused actual damages to Plaintiff in the amounts of:

A. $12,000.00 for past medical costs;

B. $100,000.00 for estimated future medical costs;

C. $7,000,000.00 for mental anguish, loss of reputation, and humiliation;

D. $425,000.00 for lost income in the past;

E. $8,000,000.00 for estimated future lost income;

F. $8,000,000.00 for past pain and suffering;

G. $4,923,000.00 for future pain and suffering; and

H. $30,000.00 in past attorneys fees and expenses associated with the false arrest and malicious criminal prosecution;

equaling $28,490,000.00, for all of which Plaintiff hereby sues.

162. In addition, Defendants in their individual capacity and the Family Defendants engaged in conduct that shows reckless or callous indifference to Plaintiff's clearly-established Constitutional rights, which justifies the imposition of punitive damages in the highest amount allowed by law up to $25,000,000.00, for all of which Plaintiff hereby sues.

Malicious Prosecution (against Defendant Quiles and Family Defendants).

163. All factual allegations above are incorporated herein by reference.

164. Plaintiff asserts that a fraudulent criminal case was brought against him by Family Defendants

and Defendant Quiles; the prosecution was procured by Family Defendants and initiated by Defendant Quiles; the prosecution was terminated in favor of Plaintiff; there was no probable cause to justify his arrest or to instigate the prosecution; the Family Defendants and Defendant Quiles acted with malice in filing the charges or bringing about or continuing the prosecution; and Plaintiff was damaged as a result of the prosecution.

165. Family Defendants and Defendant Quiles have committed malicious prosecution under both state and federal law.

166. Plaintiff has suffered money damages in defending the malicious prosecution instigated by Family Defendants and Defendant Quiles, and has suffered mental anguish, humiliation, and loss of personal and business reputation proximately caused by the conduct of the Family Defendants and Defendant Quiles.

167. Plaintiff asserts that he has suffered actual damages in the amount of $28,490,000.00 proximately caused by this malicious prosecution, for all of which Plaintiff hereby sues.

168. Plaintiff also asserts that Defendants' conduct was malicious and carried out in bad faith such that an award of punitive damages is justified against these Defendants in the highest amount allowed by law up to $25,000,000.00, for all of which Plaintiff hereby sues.

False Arrest and False Detention/Imprisonment (against Defendant Quiles).

169. Defendant Quiles willfully detained Plaintiff, without Plaintiff's consent, and without authority of law. These actions were not undertaken in good faith, but were in fact taken without probable cause to arrest and with the express knowledge that no probable cause existed.

170. Such conduct by Defendant Quiles constitutes false arrest under Texas law.

171. Plaintiff asserts that he has suffered actual damages in the amount of $28,490,000.00 proximately caused by this false arrest and imprisonment, for all of which Plaintiff hereby sues.

Negligence and Negligence Per Se (against all Defendants).

172. All factual allegations above are incorporated herein by reference.

173. Plaintiff asserts that District Attorney Defendants, or some of them, breached clear legal duties found in Texas state law requiring them to take certain actions within a prescribed period of time (Tex.Code Crim.Proc. §32.01) and to avoid concealing exonerating evidence (Tex.Code Crim.Proc. §2.01).

174. Plaintiff asserts that District Attorney Defendants either knew or should have known these statutory requirements, or therefore conducted themselves in a manner demonstrating willful

ignorance of the requirements and thus breached the duty negligently.

175. Plaintiff further asserts that the negligence of District Attorney Defendants in breaching these duties violated state statutes expressly designed to protect persons in Plaintiff's position from exactly the type of harm Plaintiff experienced. The District Attorney Defendants' actions thus constitute negligence per se under Texas law.

176. Plaintiff asserts that Family Defendants and Defendant Quiles knew or should have known that the allegations of sexual abuse against Plaintiff were false, and thus criminal charges were filed and Plaintiff was arrested in violation of clearly-established Texas state law.

177. In the alternative, Plaintiff asserts that Family Defendants and Defendant Quiles made those charges against Plaintiff without a proper investigation, and therefore made the charges negligently or recklessly.

178. Plaintiff asserts that Texas state law makes it illegal to falsely accuse a person of a crime and to falsely file any statements with police or prosecutors with the intent to initiate an arrest or prosecution without proof or probable cause to believe a crime has actually been committed. Texas Penal Code §§37.08 – 37.10

179. Plaintiff asserts that the purpose of the statutes prohibiting making or using false criminal accusations is to prevent the exact type of harm suffered by Plaintiff herein. The acts of the Family

Defendants and Defendant Quiles thus constitute negligence per se under Texas law.

180. Defendants Collin County, the City of McKinney, and the District Attorney Defendants failed to adequately and properly train and supervise their employees, and thus committed negligent training and negligent supervision amounting to conscious and deliberate indifference to the rights of citizens, including Plaintiff, and Defendants failed to act in an objectively reasonable manner in light of then clearly established law.

181. Plaintiff asserts that these breaches of duty by all Defendants proximately caused Plaintiff to suffer actual damages in the amount of $28,490,00.00, for all of which Plaintiff hereby sues.

Gross Negligence (against all Defendants except City of McKinney and Collin County).

182. All factual allegations above are incorporated herein by reference.

183. Plaintiff asserts that the actions by the Defendants described herein were taken without just cause or excuse, and with the specific knowledge that they would cause substantial injury or harm to Plaintiff.

184. These actions, when viewed objectively from the standpoint of the actor at the time of their occurrence, involved an extreme degree of risk considering the probability and magnitude of the potential harm to others, and the Defendants had actual, subjective awareness of the risks involved, but

nevertheless proceeded with conscious indifference to the rights, safety, or welfare of Plaintiff.

185. The actions of the Defendants constitute malice and gross negligence or reckless or callous disregard for the rights and safety of Plaintiff.

186. Plaintiff asserts that these breaches of duty by the Defendants proximately caused Plaintiff to suffer actual damages in the amount of $28,490,00.00, for all of which Plaintiff hereby sues.

187. Plaintiff also asserts that Texas law allows the recovery of punitive damages from these Defendants in the amount of two times actual economic damages, or $17,134,000.00, for all of which Plaintiff hereby sues.

Intentional Infliction of Severe Mental Anguish (against Family Defendants).

188. All factual allegations above are incorporated herein by reference.

189. Plaintiff asserts that when Family Defendants brought false criminal charges against him, they did so maliciously, out of spite and animus, and with the intent to inflict severe emotional distress on Plaintiff.

190. Given the facts above, including the total lack of evidence and complete lack of probable cause to believe the alleged abuse ever occurred, along with the selfish financial motives possessed by Family Defendants to fabricate the alleged abuse, there does

not seem to be any basis for Family Defendants' actions other than malice and spite toward Plaintiff.

191. Plaintiff asserts that Family Defendants' actions were extreme and outrageous.

192. Plaintiff asserts that even though Family Defendants knew the extreme, harmful consequences of their actions against Plaintiff, Family Defendants, or either of them, nevertheless took those actions intentionally and with the intent to inflict severe emotional pain and mental anguish upon Plaintiff.

193. Plaintiff asserts that these actions by Family Defendants proximately caused actual damages to Plaintiff in the amount of $28,490,000.00, for all of which Plaintiff hereby prays.

194. Under Texas law, the tort of intentional infliction of severe mental anguish allows the court or jury to impose punitive damages against the liable defendants. Plaintiff therefore requests that the Family Defendants who are found by the jury to be liable for intentional infliction of severe mental anguish be ordered to pay to Plaintiff, jointly and severally, the sum of $17,134,000.00 in punitive damages as provided by Texas law.

Application for Permanent Injunctive Relief.

195. All factual allegations above are incorporated herein by reference.

196. Plaintiff asserts that unless injunctive relief as prayed for herein is ordered, Defendants Collin County, the City of McKinney, and the District

Attorney Defendants will continue to violate the law by failing to train, failing to supervise, failing to maintain and enforce policies and procedures designed to avoid infringement on the Constitutional rights of citizens, failing to provide exonerating evidence to magistrates and courts when seeking arrest warrants, and illegally delaying the prosecution of criminal complaints pending in their offices.

197. Injunctive relief is necessary because without it, persons charged with crimes, which may include Plaintiff, will continue to suffer irreparable harm due to the continuing legal violations by District Attorney Defendants based on the policies, practices, customs, procedures or rules, or lack thereof, or lack of enforcement thereof, by their employer, Collin County, Texas.

198. Injunctive relief is necessary because without it, persons charged with crimes, which may include Plaintiff, will continue to suffer irreparable harm due to the continuing legal violations by McKinney police officers based on the policies, practices, customs, procedures or rules, or lack thereof, or lack of enforcement thereof, by their employer, the City of McKinney, Texas.

199. Injunctive relief is necessary because there is no other adequate remedy at law available to effect the same or substantially similar results that will be obtained through injunctive relief; the balance of harms between the parties favors entering the injunction; and entry of the injunction will not harm, and will in fact benefit, the public interest.

200. Injunctive relief is proper in this instance, even though Plaintiff is not presently subject to immediate Constitutional infringement, because the issue requiring injunctive relief is an issue capable of repetition but evading review; the post-hoc award of money damages in each individual case is an inadequate remedy because citizens caught in the process described herein are always released from custody and their cases dismissed by the time they have a cause of action capable of effecting the appropriate injunctive relief, and money damages or other legal relief can never fully compensate said citizens for the economic and non-economic harms suffered. Under these circumstances, an injunction is appropriate under federal law.

201. In order to prevent further failures to train and repetition of the illegal delays and withholding of relevant evidence by Defendant Quiles and the District Attorney Defendants, this Honorable Court should issue an injunction against the City of McKinney and Collin County, Texas prohibiting all police officers in the City of McKinney and all Collin County district attorneys from continuing to engage in this type of behavior, and negating and ordering stricken any and all the customs, policies, practices, or procedures of the City of McKinney and Collin County, if any, that routinely cause such judicial deception and illegal delays in prosecution, in all future cases.

202. Plaintiff therefore requests that the Court issue a permanent injunction requiring Collin County, Texas, the City of McKinney, Texas, and the District Attorney Defendants to:

(a) abrogate, dissolve, and remove any custom, policy, practice, procedure, or rule in which their employees are ordered or allowed to delay the bringing of criminal charges to a grand jury outside the statutory time limits for such action;
(b) abrogate, dissolve, and remove any custom, policy, practice, procedure, or rule of the City of McKinney or Collin County in which persons holding the position of police officer, district attorney, or assistant district attorney are encouraged, allowed, promoted, rewarded, or condoned for the withholding or secreting of relevant, exculpatory evidence from courts or magistrates during applications for arrest warrants;
(c) requiring all Collin County assistant district attorneys henceforth to either present all criminal charges to a grand jury or dismiss same within the statutory time frame required by Texas Code of Criminal Procedure §32.01; and
(d) requiring all City of McKinney police officers henceforth, at the time of making any application for an arrest warrant, to provide to the magistrate who is being asked to issue the warrant all tangible evidence bearing on the probable cause for the arrest, including without limitation, all evidence which (i) tends to disprove probable cause, (ii) which tends to prove that the target(s) of the warrant may not be guilty of the offense charged, or (iii) which consists of copies of written reports, statements, affidavits, or other documents relating to the target(s) of the warrant or the charges of criminal action brought against the target(s).

203. Plaintiff prays that a permanent injunction issue in this matter without the requirement of any bond by Plaintiff.

Attorney's Fees in This Action.

204. All factual and legal allegations above are incorporated herein by reference.

205. Plaintiff is entitled to recover a reasonable attorney's fee from the Defendants in this case in accordance with 42 U.S.C. §1988, under Texas state law as part of Plaintiff's damages incurred in his defense of the malicious prosecution inflicted upon him, and other applicable law, for all of which Plaintiff hereby sues. The exact amount of all such fees is presently unknown, is increasing with the passage of time, and the full amount of such fees will be presented to the Court at the appropriate time.

CONCLUSION AND PRAYER

Plaintiff prays that the Court issue process and require that all Defendants appear and answer herein; that upon final trial or other disposition of this case, Plaintiff recover of and from all Defendants the relief prayed for herein, including actual and punitive damages, temporary and permanent injunctive relief, attorneys' fees, costs of court, and pre-judgment and post-judgment interest, all at the highest lawful rates and amounts. Plaintiff also prays for such other and further relief as is just.

Dated June 12, 2006.

Respectfully submitted,

/s/_____

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[Certificate of Service Omitted in Printing of this Appendix]